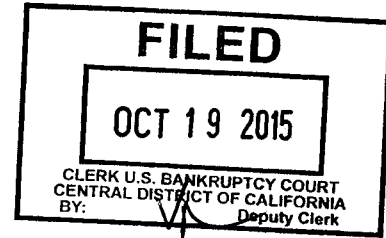


ORIGINAL



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6  
7  
8 UNITED STATES BANKRUPTCY COURT  
9 CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

10 In re:

11  
12 MOISEY FRIDMAN and ROSA FRIDMAN,  
13 Debtors

14  
15  
16  
17 KARL T. ANNDERSON, Chapter 7 Trustee  
18 Plaintiff  
19 v.

20 ALEX FRIDMAN and VAL FRIDMAN,  
21 Defendants  
22  
23  
24  
25  
26  
27  
28

) Main Case No: 8:12-bk-11721-ES  
Adversary Case No: 8:14-ap-01038-ES  
Chapter 7

Hon. Erithe A. Smith

**CREDITOR KARL AVETOOM'S RESPONSE  
TO DEFENDANTS VAL FRIDMAN and  
ALEX FRIDMAN'S OPPOSITION TO  
PLAINTIFF'S MOTION TO DISMISS;  
MOTION TO STRIKE PORTIONS OF THE  
PLAINTIFF'S MOTION THAT ARE IN  
VIOLATION OF FED. R. EVID. RULE 408  
AND REQUEST FOR HEARING (LR 9013-  
1(o))[DOCKET No: 85]; SUPPORTING  
DECLARATION OF KARL AVETOOM.**

Date: November 19, 2015  
Time: 10:30 A.M.  
Place: Courtroom "5A"  
411 West Fourth Street  
Santa Ana, CA 92705

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1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE,**  
2 **AND TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD.**

3 Creditor Karl Avetoom ("Creditor") respectfully submits his brief in Support of the Chapter 7  
4 Trustee's Motion to Dismiss the Adversary Proceeding currently before this Court. First and foremost  
5 Creditor would not have taken part in this Motion had it not been for the Defendants' decision to  
6 involve him in their diversionary ad hominem Opposition.

7 Defendants do not meet the standard under the Ninth Circuit to cause this Court or the Chapter  
8 7 Trustee to conditionally dismiss this adversary proceeding. Under the Ninth Circuit, legal prejudice  
9 is required, and our Circuit holds that the possibility of future litigation for identical claims on the  
10 same facts is not sufficient prejudice or cause for this Court to order a conditional dismissal.

11 The Chapter 7 Trustee, as the plaintiff, has discretion to dismiss his case if it becomes *overly*  
12 *burdensome to the estate*. (1) The Chapter 7 Trustee has received no meaningful discovery and for  
13 nearly two years has been delayed and ignored as predicted, and has decided in his discretion to seek  
14 dismissal without prejudice, to not foreclose other creditors from utilizing the benefit of this Court's 11  
15 U.S.C. § 727 judgment of non-discharge. To allow future claims against one of the largest assets  
16 dubiously clouded by the Defendants. (2) An additional basis now exists for the Chapter 7 to exercise  
17 his discretion not to engage in additional litigation: For several years the Defendants delayed discovery  
18 and failed to take this matter seriously, while concealing a Defendant surreptitiously transferred his  
19 interest in real property with equity of \$300,000.00 to a non-defendant spouse. Then initiated a State  
20 sham family law case to obtain an unopposed default judgment by the clerk to give the appearance of  
21 legitimacy to the premeditated transfer to shield assets. This creates additional basis for the Trustee to  
22 avoid successive litigation to vacate the transfer under California law to the non-Defendant spouse.

23 The Chapter 7 Trustee represents the entire class of unsecured creditors. California law hold  
24 creditors have privy with the Trustee, implicating res judicata and collateral estoppel on future actions.

25 **The Opposition Lacks Merit Under Established Ninth Circuit Binding Authority.**

26 (1) The Ninth Circuit holds potential future litigation over unresolved claims is not  
27 sufficient legal "prejudice" for a Court to deny unconditional voluntary dismissal.  
28

1 (2) The Ninth Circuit prohibits settlements that seek to release debts owed by non-debtors, such  
2 as Defendant Val Fridman's wife, the recent transferee of Defendant Val Fridman's assets.

3 (3) Defendants' request for fees also fails, as the Ninth Circuit bars any award for legal work  
4 that could be used in Defendants' anticipated future litigation; abrogating the American Rule.

5 (4) A Chapter 7 Trustee represents the class of unsecured creditors, his actions can bar claims  
6 the Trustee did, or could have brought. A dismissal with prejudice is a determination on the merits.

7 (5) Defendants' objection under Federal Rule of Evidence 408 is without merit. Rule 408 bars  
8 introduction of a settlement to impute liability. In this case, the Trustee cites the withdrawn Settlement  
9 not for liability, but to address undue delay, permitted expressly by § 408(b). The objection also  
10 appears to be moot as Defendants equally discussed the Settlement terms in their Opposition.

11  
12 **I. RELEVANT BACKGROUND.**

13 On November 18, 2011 the State Court, the Honorable Karen L. Robinson entered Judgment  
14 against the Debtors in the amount of \$1,000,000.00 following a unanimous jury finding, by clear and  
15 convincing evidence that Debtors engaged in outrageous racist conduct and despicable acts against  
16 Creditor Karl Avetoom. Upon agreement by Creditor, the punitive damage award was reduced upon  
17 stipulated remittitur, leaving the state court Judgment at \$650,000.00 circa January 4, 2012.

18 On or around February 10, 2012 Debtors filed their petition for bankruptcy under Chapter 13.  
19 This Court would ultimately agree with Chapter 13 Trustee that the Debtors' unsecured debt exceeded  
20 the Section 109 limits. The Debtors voluntarily converted to Chapter 7 on or around May 24, 2012.

21 From March 2012 through July 2013 the Debtors failed to complete their 341 examination, and  
22 provided limited, redacted or incomplete financial records to the Chapter 7 Trustee.

23 On or around July 8, 2013 the Chapter 7 Trustee concluded the "341" examination, wherein the  
24 Debtors failed to account for their dissipation of \$120,000.00 in funds on the eve of filing bankruptcy.

25 On July 30, 2013 the Chapter 7 Trustee filed an adversary action against the Debtors, seeking  
26 non-discharge under several provisions of §727. On or around January 29, 2015, the Debtors  
27 stipulated to all counts contained within the §727 complaint. The Court entered judgment denying  
28 Debtors their respective discharges on February 18, 2015 [Adv. Case No. 8:13-ap-01253-ES]

1 On or around February 2, 2014 the Chapter 7 Trustee, upon information obtained through the  
2 Debtors' examinations, filed this adversary proceeding against the Debtors' sons, Val Fridman and  
3 Alex Fridman ("Defendants"), and another adversary proceeding against Victoria Gureyeva.

4 On or around April 28, 2014 Defendant Val Fridman transferred all of his interest in his  
5 residence to Deborah Fridman, which admittedly has \$300,000.00 in equity [**Exhibit "1"** to Avetoom  
6 Declaration].

7 On December 2, 2014 Defendant Val Fridman and his wife, non-defendant, Deborah Fridman,  
8 commenced an action in the family division of the Orange County Superior Court ("Family Case",  
9 Case No: 14FL010523). The same day, they transferred Defendant Val Fridman interests in assets  
10 with equity to Deborah Fridman, under a purported "property declaration". Deborah Fridman then  
11 obtained a default judgment from the Clerk of the Family Court on or around April 3, 2015 [**Exhibit**  
12 **"2"** to Avetoom declaration].

13 In 2014 Creditor filed one motion to disqualify attorney Katzman, which was denied. In  
14 Creditor's Motion, he informed the Court of Defendants signaled intent to frustrate the estate by  
15 spending up to \$60,000 to deny recovery [Doc. No 10, pp. 13-14].

16 On or around February 26, 2015 Defendants' former counsel filed his own motion to withdraw  
17 as counsel citing "irreconcilable differences" which caused it unreasonably difficult to remain on as  
18 Defendants' attorneys [Docket No. 64]. The Court granted the Motion on March 19, 2015, and granted  
19 extensions for discovery responses and pleadings for the Defendants.

20 In or around January 2015 through March 2015 Defendant Val Fridman attended several  
21 incomplete Judgment Debtor Exams ordered by the State Court against Moisey Fridman for post  
22 petition judgments. Defendant Val Fridman voiced his disagreement with his then counsel (Katzman)  
23 who kept requesting additional monies to continue representation. Defendant Val Fridman also  
24 expressed his disdain for the Chapter 7 Trustee's counsel, Anthony Friedman, openly irritated that their  
25 Jewish heritage had not garnered more leverage as he expected. Defendant Val Fridman claimed he  
26 was "judgment proof" and that if the Chapter 7 Trustee wanted to pursue "\$60,000.00" in the Debtors'  
27 residence, Defendant Val Fridman would rather spend \$60,000.00" to defeat any benefit. Defendant  
28 Val Fridman offered Creditor Karl Avetoom monies admittedly "set aside" and assignment of the

1 rights to sue debtors' former trial attorney, D. Michael Bush, for malpractice, in exchange for  
2 Creditor's efforts to compel the Chapter 7 Trustee to drop this adversary proceeding. Creditor declined  
3 and notified Trustee's Counsel, Todd Frealy, of Defendant Val Fridman's request [Avetoom Decl. ¶ 9].

4 In or around June 2015 counsel for the Chapter 7 Trustee and the Defendants reported they  
5 were in discussions over a potential settlement. Creditor informed the Chapter 7 Trustee that any  
6 proposed settlement under Rule 9019 should benefit the estate, not solely pay for the Trustee's legal  
7 fees, and should not collaterally bar any future claims that could be brought against the Debtors or  
8 third parties, thereby vitiating the benefit of the § 727 Judgment and recovery of \$100,000 in  
9 unaccounted funds [Avetoom Decl. ¶ 6].

10 From the Motion to Dismiss, and the Opposition it appears that the withdrawn Settlement  
11 included terms to (1) settle all claims including any against Deborah Fridman, the transferee of  
12 Defendant Val Fridman's assets during this adversary proceeding [Motion p. 4, Lines 21-26], and (2)  
13 Defendants were seeking a waiver of all claims and debts, known and unknown, against all parties  
14 [Opposition p. 3, Lines 19-21].

15 Unable to overcome the Ninth Circuit's standard for voluntary dismissals, the Opposition relies  
16 upon numerous unsubstantiated claims, such as the Creditor is controlling the Chapter 7 Trustee's  
17 counsel, or that the Trustee will assign his litigation rights to Creditor, or that Creditor is actively  
18 pursuing litigation against Defendants, or Creditor intends on taking all of the Defendants' money or  
19 an alleged breach of a protective order by Trustee's counsel, etc, etc. All are untrue. [Avetoom Decl.  
20 ¶¶ 5, 7, 12, 13]. Defendant continues to fabricate allegations out of desperation, despite the State  
21 Court's rejection of similar claims by Debtors and the Defendants that were ruled "not to be credible."

22 Said allegations are simply diversions thrown up to avoid attention from the simple facts of this  
23 case: That the Debtors' admitted to fraudulent conduct that included the undisclosed transfer of funds  
24 in excess of \$120,000.00 on the eve of their petition. It is axiomatic, that had Debtors accounted for  
25 the whereabouts of these funds as unrelated to the Defendants, Trustee's counsel would not have  
26 pursued the dubious \$50,000.00 in unaccounted funds wired from by Val Fridman residing in Fountain  
27 Valley, to Alex Fridman in San Francisco, who then wired the money back to Orange County for the  
28 parents to purchase a condominium in Huntington Beach, CA. In reality, Defendants fear the

1 possibility of having to defend their acts in state court, before a state jury, who were less than  
2 accepting of Debtors and Defendants conduct. Defendants want to force the Trustee to chase them to  
3 fulfill their intentions to harm the estate, rather than face litigation in the state courts.

4 Creditors are naturally sensitive to proposed Settlements, given the benefit of the § 727  
5 Judgment acknowledged by this Court, and the unexplained missing funds, stipulated before this very  
6 Court. Not to mention the changing stories behind the purported assignment of the Debtors' judgment.

7 In January 2013 this Court granted the Debtors' former attorneys, Darling & Risbrough ("law  
8 firm") relief from stay to pursue a Writ of Mandate in state court based upon a claim that the Debtors  
9 assigned the judgment to the law firm during the *Avetoom v. Fridman* litigation. The law firm  
10 immediately changed positions from assignment, to lien, which this Court would later rule and enter an  
11 Order holding any lien claim would violate the Relief from Stay Order, and create an interest in the  
12 estate. The law firm continued to pursue a lien claim to the end of the Writ proceeding, and even  
13 obtained a Writ of Execution in the Debtors' names, seemingly the asset returned to the Debtors  
14 [Avetoom Decl. ¶¶ 16, 17].

15 On September 29, 2015 the State Court denied the Writ, holding "if" the Debtors had assigned  
16 the underlying judgment the Writ would not benefit them, mandating denial. Then noted the law  
17 firm's shifting positions, from assignment to lien before the two courts and the implications with this  
18 Court and the Stay. The Court then questioned if the law firm even had an enforceable lien under  
19 California law [Exhibit "3" to Avetoom declaration, Order Denying Writ]. This creates additional  
20 problems caused by intentional delays, changing stories, resulting in a State Court that refused to find a  
21 valid assignment, or an enforceable attorney lien. The Order ultimately instructed the parties to  
22 possibly return to this bankruptcy court. The delays and changing stories have come back home.

23 **II. DEFENDANTS' OBJECTION UNDER RULE 408 IS MISGUIDED AND WAIVED.**

24 Defendants' Objection to the Chapter 7 Trustee's reference to a withdrawn settlement is  
25 without merit. Federal Rule of Evidence 408 bars use of a settlement to impute liability, but under  
26 subsection (b) it expressly does not prohibit the Trustee's reference to address a contention of "undue  
27 delay." This objection is also waived as Defendants have also referenced the settlement and terms in  
28 their Objection/Opposition. Accordingly, the Court should overrule Defendants' Objection.



1 **III. THE CHAPTER 7 TRUSTEE REPRESENTS THE CLASS OF UNSECURED**  
2 **CREDITORS, THE FORM OF THE DISMISSAL WILL HAVE PRECLUSIVE**  
3 **EFFECT UPON THE CREDITORS WHO ARE IN PRIVY WITH THE TRUSTEE.**

4 Here, a conditional dismissal (with prejudice) would bar all other unsecured creditors from  
5 pursuing an avoidance claim under California's Fraudulent Transfer Act ("CUFTA") as the Chapter 7  
6 Trustee and the creditors are in privity, thus collaterally estopping future claims that were, or could have  
7 been brought by the Chapter 7 Trustee. This Court has made it known that the § 727 Judgment of  
8 Non-Discharge is the true benefit for the remaining creditors. And given the \$50,000.00 known to be  
9 at issue here, it is in the best interest of the creditors to be able to pursue said monies, and not be barred  
10 by a conditional dismissal disfavored by the Ninth Circuit.

11 Proceedings in bankruptcy are proceedings *in rem* and all persons concerned, including  
12 creditors, are deemed to be parties to the proceedings. (*Levy v. Cohen* (1977) 19 Cal.3d 165, 172). A  
13 bankruptcy court judgment has the same effect on the parties and privies in the California courts as in  
14 the federal courts. (*Id.* at p. 173). The California courts are required to give full faith and credit to final  
15 bankruptcy court orders. *See Levy* at p. 172 (full faith and credit must be given to bankruptcy order,  
16 which was held to bar action by creditors as res judicata); *George v. County of San Luis Obispo* (2000)  
17 78 Cal.App.4th 1048, 1052 ("Full faith and credit must be given to final bankruptcy court orders").)

18 The doctrine of res judicata "prevents the readjudication of all matters ... which were, or might  
19 have been, litigated in a prior proceeding between the same parties." (*Ibid.* *See also In re Marlur* (8th  
20 Cir. 2001) 267 F.3d 749, 754 (bankruptcy trustee "represents all unsecured creditors of the bankruptcy  
21 estate" and a judgment or order to which trustee is a party is binding on the creditors as res judicata);  
22 *Petitioning Creditors of Melon Produce Inc. v. Braunstein* (1st Cir. 1997) 112 F.3d 1232, 1240 ("A  
23 trustee in bankruptcy is a fiduciary representing the estate and creditors," such that unsecured creditors'  
24 equitable subordination claims were barred by the res judicata effect of the trustee's actions); *In re Met-*  
25 *L-Wood Corp.* (7th Cir. 1988) 861 F.2d 1012, 1017 ("The trustee in bankruptcy in the creditors'  
26 representative, and therefore a judgment for or against the trustee is res judicata on a suit on the same  
27 claim by a creditor, provided no conflict of interest made the trustee's representation inadequate"); *In*  
28 *re Dominelli* (9th Cir. 1987) 820 F.2d 313, 316-17 (bankruptcy trustee's settlement and dismissal of its

1 action against senior lienholder “operates as res judicata to bar” junior lienholder from bringing his  
2 own action.

3 Under California law, the doctrine of res judicata precludes parties or their privies, such as the  
4 creditors represented by the Chapter 7 Trustee, from litigating an issue that has been finally determined  
5 by a court of competent jurisdiction. (*Levy v. Cohen* (1977) 19 Cal.3d 165, 171). “A dismissal with  
6 prejudice is the modern name for a common law retraxit.” (*Rice v. Crow* (2000) 81 Cal.App.4th 725,  
7 733.) “A retraxit is a judgment on the merits preventing a subsequent action on the dismissed claim.”  
8 (*Ibid.*) “Since a retraxit ‘invok[es] the principles of res judicata,’ it of course follows that a retraxit ...  
9 bars claims dismissed with prejudice between the same parties **or their privies.**” (*Id.* at p. 735 [quoting  
10 *Datta v. Staab* (1959) 173 Cal.App.2d 613, 621]. See also *Roybal v. University Ford*(1989) 207  
11 Cal.App.3d 1080, 1085-86 [“Roybal’s voluntary dismissal with prejudice constituted a determination  
12 on the merits and was res judicata”]; *Wouldridge v. Burns* (1968) 265 Cal.App.2d 82, 84 [explaining in  
13 a case involving a plaintiff’s voluntary dismissal with prejudice that “[i]t is settled law that the  
14 dismissal of an action, *with prejudice*, is a bar to any future action on the same subject matter”].)

15 Very simply, if this adversary proceeding is dismissed *with prejudice*, then as the creditors are  
16 in privy with the Chapter 7 Trustee, any claims that were or could have been filed by the Chapter 7  
17 Trustee would be collaterally estopped or subject to res judicata in subsequent actions.

18  
19 **IV. THE NINTH CIRCUIT HOLDS A CLAIM OF PREJUDICE BY POTENTIAL**  
20 **FUTURE LITIGATION IS INSUFFICIENT TO DENY AN UNCONDITIONAL**  
21 **DISMISSAL.**

22 The Ninth Circuit case of *In re Lowenschuss* (9th Cir. 1995) 67 F.3d 1394, 1399-1400,  
23 applying F.Rule.Civ.P 41 (codified in the bankruptcy code as Rule 7041) held:

24  
25 “[i]n deciding whether to grant a voluntary dismissal, a trial court must consider  
26 whether the defendant will suffer legal prejudice as a result of the court’s dismissal. *See*  
27 *Hyde & Drath v. Baker*, 24 F.3d 1162, 1169 (9th Cir.1994); *see also LeCompte*, 528  
28 F.2d at 604 (“[We] follow the traditional principle that dismissal should be allowed  
unless the defendant will suffer some plain prejudice *other than the mere prospect*  
*of a second lawsuit.*”) . . .”

1 The Lowenschuss Court then held: “At most, Lowenschuss has been inconvenienced by  
2 expending time and resources in preparing for the trial and we have held that “[t]he inconvenience of  
3 defending another lawsuit or the fact that the defendant has already begun trial preparations does not  
4 constitute prejudice.” *Hyde & Drath*, 24 F.3d at 1169. We also note that the inconvenience  
5 Lowenschuss has suffered is lessened by the fact that Lowenschuss's trial preparation will likely be  
6 relevant to defending the New Jersey action.” *In re Lowenschuss* at 1400-1401. [emphasis added]; see  
7 also *In re Combs* (B.A.P. 9th Cir., Apr. 3, 2008, ADV.05-00570) 2008 WL 8444803, at \*5 where the  
8 BAP adopted the ruling in *Lowenschuss* and Rule 41 (FRBP 7041). Such is the case here.

9 Defendants’ Opposition, aside from the discredited diversionary claims that they are victims,  
10 alleges prejudice by a voluntary dismissal as Defendants purportedly spent \$30,000.00 over the past  
11 two years in preparation, while causing the estate to spend equal or greater fees. However, this claim  
12 is insufficient under binding Ninth Circuit’s law that holds a defendant’s claim of trial preparation and  
13 the prospect of a future identical lawsuit “do not constitute prejudice” warranting this Court deny the  
14 Chapter 7 Trustee’s motion or place conditions that the action is dismissed with prejudice under  
15 *Lowenschuss*, supra. The Defendants’ threat to spend up to \$60,000.00 to prevent the Trustee from  
16 recovering \$60,000.00 for the estate is reason alone to cause the Trustee to re-evaluate, given the  
17 delays and defective discovery offered by Defendants for two years.

18 Additionally upon discovery that immediately after the Trustee commenced this adversary  
19 proceeding, Defendant Val Fridman and wife, non-defendant Deborah Fridman, transferred all interest  
20 in their community residence to non-defendant spouse Deborah Fridman, and then commenced a sham  
21 family law case in the State Court. Upon filing the Family Case, Defendant Val Fridman again  
22 transferred assets containing equity to non-defendant spouse Deborah Fridman. The only parties to  
23 collect from are Defendant Val Fridman, or Deborah Fridman, through an additional action to set aside  
24 the premeditated transfers designed to move \$300,000.00 of equity away from the Trustee, to a non-  
25 defendant spouse. [Avetoom Decl. ¶¶ 2, 3, 11]. This creates additional discretion and reasoning not to  
26 expend more time by the Chapter 7 Trustee. That Defendants’ Opposition anticipates future identical  
27 claims in state court is unpersuasive and further supports the Ninth Circuit’s position that favors  
28 unconditional voluntary dismissal of an action by the Chapter 7 Trustee under *Lowenschuss*.

1 The Trustee's decision not to chase the Defendants in additional actions and forums lies within  
2 his discretion. Should other Creditors seek to pursue these claims, they should not be foreclosed if  
3 they wish to pursue these claims at their own cost. This is consistent with Ninth Circuit law.

4 The Defendants' urgency for a Settlement to include any and all known or unknown claims and  
5 debts, and to include non-defendant Deborah Fridman, is again disfavored by the Ninth Circuit.

6 **V. THIS CIRCUIT DISFAVORS SETTLEMENTS IMMUNIZING THIRD PARTIES.**

7 Defendants urge this Court to ignore the Ninth Circuit and grant dismissal with prejudice.  
8 Defendants fail to meet the high standard of the Ninth Circuit in their request. Defendants' attempt to  
9 blame the Trustee is unpersuasive given their own history of delays and evasive conduct.

10 Rather than take settlement seriously, Defendants stalled for months, used the State Court to  
11 divert assets, causing the Chapter 7 Trustee to now consider undertaking an additional state court  
12 action to set aside a default judgment and the transfer of assets in an attempt to force the Chapter 7  
13 Trustee to include a third party, non-defendant transferee in a settlement. A proposed settlement that  
14 would bar pursuit of all claims and debts for non-debtors post bankruptcy, clearly fails the *In re A & C*  
15 *Properties*<sup>1</sup> factors for what is best for the creditors, and is also clearly disfavored by our own Ninth  
16 Circuit. See *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir.1995) [*cert. denied*, 517 U.S. 1243, 116  
17 S.Ct. 2497, 135 L.Ed.2d 189 (1996)]("this court has repeatedly held, without exception, that § 524(e)<sup>2</sup>  
18 precludes bankruptcy courts from discharging the liabilities of non-debtors.").

19 A proposed Settlement to immunize third parties clearly fails the Ninth Circuit's standard.

20 **VI. THE NINTH CIRCUIT DISFAVORS REQUEST FOR FEES IN DISMISSALS.**

21 The Defendants' request for compensation in anticipation of future identical litigation is barred  
22 both under the American Rule, and Ninth Circuit law. Presumably had attorney fees been awardable  
23 under § 548, the Trustee would have more incentive to pursue Defendants, given the \$300,000.00 in  
24 equity in Defendant Val Fridman's transferred residence which can be set aside under California law.

25  
26  
27 <sup>1</sup> *In re A & C Properties* 784 F.2d 1377 (9th Cir.), cert. denied, 479 U.S. 854 (1986)

28 <sup>2</sup> discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of  
any other entity for, such debt. [11 U.S.C. § 524(e)]

1 The Court in *Maculan v. City of Escondido* (S.D. Cal., July 8, 2014, 13CV1794 L WVG) 2014  
2 WL 3341070<sup>3</sup>, visited these same issues of voluntary dismissal, and a demand for costs. The *Maculan*  
3 Court summarized the Ninth Circuit rulings discussed to grant voluntary dismissal.

4 “A district court should grant a motion for voluntary dismissal under Rule 41(a)(2)  
5 unless a defendant can show that it will suffer some plain legal prejudice as a result.”  
6 *Stevedoring Services of America*, 889 F.2d at 975. In the Ninth Circuit, plain legal  
7 prejudice is “prejudice to some legal interest, some legal claim, some legal argument.”  
8 *Westlands Water Dist. v. United States*, 100 F.3d 94, 97 (9th Cir.1996). **Neither “the**  
9 **expense incurred in defending against a lawsuit” nor the “[u]ncertainty [that] a**  
10 **dispute remains unresolved” amounts to “legal prejudice.”** *Id.*; see also *Mitchell–*  
11 *Jones v. Menzies Aviation, Inc.*, 2011 WL 3273221, \*3 (W.D.Wash., 2011) (“**The**  
12 **Ninth Circuit has plainly rejected this type of inconvenience and expense as a basis**  
13 **for finding plain legal prejudice in the context of a Rule 41(a)(2) motion. See, e.g.,**  
14 ***In re Lowenschuss*, 67 F.3d 1394, 1400–01 (9th Cir.1995) (“[T]he inconvenience of**  
15 **defending another lawsuit or the fact that the defendant has already begun trial**  
16 **preparations does not constitute prejudice.”). Accordingly, defendant’s request here**  
17 **for its total costs incurred in defending this action does not support a finding of plain**  
18 **legal prejudice.. . . A defendant against whom a claim has been dismissed without**  
19 **prejudice, has not been “freed of the risk of relitigation of the issues just as if the case**  
20 **had been adjudicated in his favor after a trial, in which event (absent statutory**  
21 **authorization) the American Rule would preclude such an award.”** *Colombrito v. Kelly*,  
22 764 F.2d 122, 134 (2nd Cir.1985).

23 The court in *Maculan* would then bar the award of attorney fees to a defendant in a dismissed  
24 action that could be used by the defendant in a second action for identical claims. The *Maculan* court  
25 held that such a ruling would abrogate the American Rule.

26 The Opposition claims Defendants expect Creditor to file an identical action against them  
27 (Opposition p. 4, Line 26, p. 5, Line 15). Accepting Defendants’ claims for the purposes of this  
28 Motion, Defendants cannot be awarded any fees for work that would be used in future identical  
litigation. Such an award would also abrogate the American Rule.

The Defendants’ transfers occurred in 2013 and 2014, and in light of this Court’s § 727  
Judgment for Non-Discharge, any creditor may pursue identical avoidance claims post bankruptcy

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<sup>3</sup> Understanding a district court’s orders are not binding upon this Court, the *Maculan* court simply  
summarizes the Ninth Circuit’s law on identical issues before this Court.

1 under California law<sup>4</sup>, subject to a statutory four (4) year statute of limitation. The Ninth Circuit  
2 undeniably bars an award of fees in anticipation of such admitted anticipated identical litigation.

3 **VII. CONCLUSION.**

4 Based on the foregoing Ninth Circuit binding authority, the Chapter 7 Trustee's Motion to  
5 Voluntarily Dismiss without Prejudice should be granted, and Defendants' Opposition denied and  
6 objection overruled.

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10 Dated: October 19, 2015

By:

  
Karl Avetoom  
Creditor, In Pro Per

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<sup>4</sup> Four year statute of limitations Ca. Civil Code § 3439.09 ("CUFTA") would expire in 2018.  
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**SUPPORTING DECLARATION OF KARL AVETOOM**

I, Karl Avetoom, hereby declare as follows:

1. I am a creditor in bankruptcy case 8:12-bk-11721-ES. I have personal knowledge of the following facts and if called upon to testify under oath, I could and would do so competently. I make this declaration in Response to Defendants' Opposition to the Chapter 7 Trustee's Motion to Dismiss the Adversary Complaint without prejudice, and Defendants' Motion to Strike portions of said Motion under Fed.Evid.Rule 408 [Docket # 85].

2. Attached to my declaration as **Exhibit "1"** is a true and correct copy of the Transfer document ("Quitclaim") recorded approximately two months after the Chapter 7 Trustee filed this adversary complaint against Defendants Val Fridman, and Alex Fridman. The transfer document seeks to convey sole interest in the Defendant Val Fridman's real property to his non-defendant wife, Deborah Fridman. This property, according to documents in the Family Law case filed after, represents \$300,000.00 in equity in this property.

3. Attached to my declaration as **Exhibit "2"** are true and correct copies of the State Court family law action filed on or around December 2, 2014 by non-defendant, Deborah Fridman, wife of Defendant Val Fridman, including a filed property settlement and default judgment obtained by Deborah Fridman with participation of Defendant Val Fridman. The filings show Defendant Val Fridman's real property having \$300,000.00 in equity as of December 2, 2014 (see FL-160).

4. Attached to my declaration as **Exhibit "3"** is a true and correct copy of the State Court's Order DENYING Debtors' law firm's Writ of Mandate, wherein the State Court questioned "if" the Debtors had transferred the judgment, then the Debtors as petitioners would have no benefit in the Writ, mandating denial of the Writ. The State Court also denied exercising its discretion to rule on the existence of the law firm's "lien" claim, based in part upon the shifting positions of the law firm, from assignment to lien, in the State Court and this Court, resulting in conflicting Orders. The State Court ruled it did not want to run afoul of this Court's Orders and Stay. The Order denying the Writ also gives rise to the matter coming back to this Court 2 ½ years later.

5. The allegations in Defendants' Opposition relating to me are completely without merit. Chapter 7 Trustee's counsel has not breached any protective Order, nor discussed Settlement

1 information with me that has not been disclosed in pleadings. Trustee's counsel has not signaled any  
2 intent to transfer litigation rights to this case, nor have I requested such a transfer.

3 6. Upon learning of a proposed Settlement, I informed the Chapter 7 Trustee's counsel that  
4 I understood the Trustee has discretion, but that I hoped any proposed Settlement would benefit the  
5 estate, not merely satisfy the Trustee's incurred attorney fees, and prejudice or frustrate the benefit this  
6 Court has recognized in the § 727 Judgment denying discharge in light of substantial monies that  
7 remain unaccounted for. And that a Settlement would not collaterally bar a creditor post bankruptcy  
8 from pursuing any claim the Chapter 7 Trustee could have filed in the bankruptcy.

9 7. I am not actively pursuing the Defendants' in any action as they claim. Contrary to the  
10 Opposition, the only retaliation ever found in any Court was the 2011 Jury findings of racial hatred and  
11 retaliation that motivated the Debtors' outrageous acts. This resulted in the Jury's unanimous finding  
12 by clear and convincing evidence, and judgment for \$1,000,000.00 that was reduced to \$650,000.00 by  
13 my voluntary stipulation on or about January 4, 2012, in the *Avetoom v. Fridman* case (OCSC 30-  
14 2010-00345490).

15 8. In knowing the Debtors and their sons since 2006, they often resort to claiming to be  
16 victims of racial bias being from the Ukraine/Russia and often resorting to claiming they are always  
17 prejudiced by being Jewish. I have witnessed correspondence from the Debtors and Defendants using  
18 these same claims existing nearly a decade *before* I ever met them.

19 9. In or around January 2015 through March 2015 Defendant Val Fridman attended  
20 several incomplete Judgment Debtor Exams of Debtor Moisey Fridman, for post petition debts.  
21 During several of these partial exams, Defendant Val Fridman expressed his frustration with his former  
22 counsel (Katzman) who according to Val Fridman, was mainly interested in billing. Defendant Val  
23 Fridman also expressed his dislike for the Chapter 7 Trustee's counsel, Mr. Anthony Friedman, based  
24 upon Defendant's belief that the similarity in their religion should carry more weight in the adversary  
25 proceeding. I informed Defendant Val Fridman that I did not know Attorney Anthony Friedman at  
26 that point, and that I had only known Mr. Todd Frealy who I believe is not prosecuting this adversary  
27 case. During Defendant Val Fridmans' conversation regarding Attorney Anthony Friedman,  
28 Defendant Val Fridman stated that if "he" [Friedman] wanted to pursue him for \$60,000, then



1 Defendant Val Fridman would rather spend \$60,000 to deny any positive recovery. I had heard this  
2 before in 2014 when then Defendants' attorney Katzman inferred the Defendants would spend up to  
3 \$60,000 to deny a positive recovery. I included this in my 2014 Motion to disqualify attorney  
4 Katzman, who I and my former state court trial counsel spoke to prior to him representing Defendants.  
5 The Motion to disqualify was denied by this Court in 2014. Katzman's firm denied having record of  
6 speaking to me, but did not deny speaking to my attorney in 2011. I made the decision not to pursue  
7 disqualification further, as I believed that it was only a matter of time for the Defendants to have  
8 problems with Katzmans' firm, which would result in a motion to withdraw by Katzman's firm. In  
9 February 2015, true to my belief, Katzman's firm filed a motion to be relieved based upon  
10 *irreconcilable differences that caused a breakdown in their ability to provide legal advice*. This is a  
11 clear pattern involving Debtors and their family who have used approximately 18 attorneys since 2011,  
12 and spend their days sending retaliatory complaints to courts and the State Bar, all rejected.

13 10. I was also offered several thousand dollars by Defendant Val Fridman from funds "set  
14 aside", and the right to sue the Debtors' former trial counsel, D. Michael Bush, for malpractice, in  
15 exchange for my assistance in having the Chapter 7 Trustee drop this adversary proceeding.

16 11. I was also informed by Defendant Val Fridman that he was "judgment proof" because  
17 of a family court proceeding wherein his wife, Deborah Fridman, had taken all of his assets.

18 12. Mr. Frealy, nor any member of his firm, has ever breached a protective Order as alleged  
19 by Defendants in their Opposition and supporting declaration.

20 13. When I have inquired how cases were proceeding, Mr. Frealy would simply tell me that  
21 discovery responses were still outstanding, and that several stipulations for continuances were granted  
22 in an effort to obtain discovery. Such facts were also available from the Court's website. I have  
23 learned more of the terms of the Settlement discussions from the Motion and Oppositions filed by the  
24 attorneys and their respective counsel.

25 14. It is my belief that the Chapter 7 Trustee could win the adversary proceeding before the  
26 Court, however the ability to collect is now prejudiced in light of Defendant Val Fridman's transfer of  
27 property to his wife, non-defendant Debtorah Fridman, that forms an additional basis not to proceed in  
28 litigating another case in state court.

1           15.     In the event the Chapter 7 Trustee does not continue his pursuit of the fraudulent  
2 transfer claims, I may consider pursuing my own independent action based upon the same claims as  
3 the Chapter 7 Trustee, post bankruptcy. However, this is dependent on the Debtors and third parties,  
4 willingness to enter into a mutually beneficial settlement.

5           16.     In or around January 2013 this Court issued a relief from Stay Order for the Debtors'  
6 former law firm (Darling & Risbrough) limited to a claim of a purported assignment of a judgment  
7 from the Debtors to the law firm, during the pendency of the *Avetoom v. Fridman* action. The law firm  
8 would immediately return to state court and claim a "lien" instead of an assignment. I then obtained an  
9 Order from this Court clarifying that the law firm could not pursue any form of lien in the State Court.  
10 However to the end of the Writ proceedings, the law firm pursued claims founded upon case law  
11 expressly held by the State Court in 2013 to be limited to "lien" claims.

12           17.     On September 29, 2015 the State Court ultimately denied the Writ proceeding filed by  
13 Debtors in 2010. The State Court was seemingly unwilling to take a firm stance on the validity of an  
14 assignment, or a lien, based on the shifting positions of the law firm. The law firm also obtained a  
15 Writ of Execution in the name of the Debtors, which appears to convey back an interest in the  
16 judgment this Court was informed was transferred in 2011. The law firm's request for additional  
17 attorney fees of approximately \$160,000.00 and second request for bankruptcy fees for roughly  
18 \$54,000.00 for the single relief from Stay Motion in January 2013, were also denied.

19  
20           I declare under penalty of perjury under the laws of the United States, that the foregoing is true  
21 and correct and to the best of my knowledge.

22           Executed October 19, 2015 in Newport Beach, CA

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25           By: 

26           Karl Avetoom  
27           Creditor In Pro Per  
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## EXHIBIT “1”

RECORDING REQUESTED BY:  
EnTitle Insurance Company

WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

Deborah L. Fridman  
18274 Santa Stephana Circle  
Fountain Valley, CA 92708

APN: 112-802-17  
TITLE ORDER NO.: 2014-76339  
ESCROW NO.: 76339-SF

Recorded in Official Records, Orange County  
Hugh Nguyen, Clerk-Recorder



12.00

2014000159573 8:00 am 04/28/14

90 401 D10 F13 2

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THIS SPACE FOR RECORDER'S USE ONLY

**INTERSPOUSAL GRANT DEED**

(Excluded from reappraisal under California Constitution Article 13A §1 et seq.)

The undersigned Grantor(s) declare(s) that the **DOCUMENTARY TRANSFER TAX IS: \*\*\*0\*\*\***  
\*\*\*This conveyance establishes the sole and separate property of a spouse, and the Grantor  
received nothing in return, R&T 11911.\*\*\*

This is an interspousal transfer and not a change in ownership under §63 of the Revenue and Taxation Code.

**FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Val M. Fridman, spouse of Grantee**

**HEREBY GRANTS to Deborah L. Fridman, a married woman as her sole and separate property**

All that real property situated in the City of Fountain Valley, County of Orange, State of California, described as: EXHIBIT "A"  
ATTACHED HERETO AND MADE A PART HEREOF

**Commonly Known As:** 18274 Santa Stephana Circle, Fountain Valley, CA 92708

It is the express intent of the Grantor, being the spouse of the Grantee, to convey all right, title and interest of the Grantor,  
community or otherwise, in and to the herein described property to the grantee as his sole and separate property

Dated: April 17, 2014

STATE OF CALIFORNIA  
COUNTY OF Orange

On April 21, 2014, before me,  
Jolyn Bailey, a notary public,  
personally appeared Val M. Fridman

Val M. Fridman

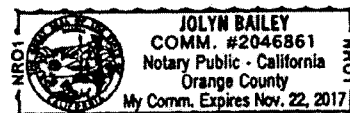
who proved to me on the basis of satisfactory evidence to be the  
person(s) whose name(s) is/are subscribed to the within  
instrument and acknowledged to me that he/she/they executed  
the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the  
entity upon behalf of which the person(s) acted, executed the  
instrument.

I certify under PENALTY OF PERJURY under the laws of the  
State of California that the foregoing paragraph is true and  
correct.

WITNESS my hand and official seal.  
Signature Jolyn Bailey

MAIL TAX STATEMENT AS DIRECTED ABOVE

(SEAL)



Order No.: 2014-76339

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE FOLLOWING DESCRIBED REAL PROPERTY IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA:

**PARCEL 1:**

LOT 44 OF TRACT NO. 6922, IN THE CITY OF FOUNTAIN VALLEY, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 275, PAGES 30 AND 31 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**PARCEL 2:**

AN EASEMENT FOR INGRESS, EGRESS AND INCIDENTAL PURPOSES OVER THE NORTHERLY 5.00 FEET OF LOT 43 OF SAID TRACT 6922, SAID EASEMENT GRANTED HEREBY BEING SUBJECT TO AND IN ACCORDANCE WITH PARAGRAPH 14 OF PART I OF THE HEREIN BELOW DESCRIBED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

**PARCEL 3:**

A NON-EXCLUSIVE EASEMENT OVER LOT A OF TRACT 6918 AS PER MAP RECORDED IN BOOK 265, PAGES 25 AND 26 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY (THE "COMMON AREA") FOR INGRESS, EGRESS AND THE USES AND PURPOSES SET FORTH IN THE BELOW REFERRED TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

**PARCEL 4:**

A NON-EXCLUSIVE EASEMENT OVER LOT A (THE "COMMON AREA") OF TRACT 6922 AS PER MAP RECORDED IN BOOK 275, PAGES 30 AND 31 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, FOR INGRESS, EGRESS AND THE USES AND PURPOSES SET FORTH IN THE BELOW REFERRED TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

APN: 112-802-17

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## EXHIBIT “2”

FL-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Deborah L. Fridman</b> <b>18374 Santa Stephana Cir</b> <b>Fountain Valley, CA 92708</b> TELEPHONE NO.: <b>714 274 9090</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Self represented</b>		FOR COURT USE ONLY  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER <b>DEC 02 2014</b> ALAN CARLSON, Clerk of the Court BY: <b>J. DUONG</b> , DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: <b>FAMILY LAW COURT OPERATIONS</b> MAILING ADDRESS: <b>341 THE CITY DRIVE</b> CITY AND ZIP CODE: <b>POST OFFICE BOX 14170</b> BRANCH NAME: <b>ORANGE, CA 92863-1570</b>		CASE NUMBER: <b>14D010523</b>
MARRIAGE OF PETITIONER: <b>Deborah L. Fridman</b> RESPONDENT: <b>Val M. Fridman</b> PETITION FOR <input type="checkbox"/> Dissolution of Marriage <input checked="" type="checkbox"/> Legal Separation <input type="checkbox"/> Nullity of Marriage <input type="checkbox"/> AMENDED		

1. RESIDENCE (Dissolution only) ☐ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition for Dissolution of Marriage*.

2. STATISTICAL FACTS

a. Date of marriage: **Oct 21, 1990**  
b. Date of separation: **Jan 5, 2014**

c. Time from date of marriage to date of separation (specify):  
Years: **23** Months: **3**

3. DECLARATION REGARDING MINOR CHILDREN (include children of this relationship born prior to or during the marriage or adopted during the marriage):

- a. ☐ There are no minor children.  
b. ☒ The minor children are:

Child's name	Birthdate	Age	Sex
<b>Jacob D. Fridman</b>		<b>15</b>	<b>M</b>
<b>Cara N. Fridman</b>		<b>13</b>	<b>F</b>

☐ Continued on Attachment 3b.

c. If there are minor children of the Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.

d. ☐ A completed voluntary declaration of paternity regarding minor children born to the Petitioner and Respondent prior to the marriage is attached.

4. SEPARATE PROPERTY

Petitioner requests that the assets and debts listed ☒ in *Property Declaration* (form FL-160) ☐ in Attachment 4  
☐ below be confirmed as separate property.

Item

Confirm to

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child or spousal support.

MARRIAGE OF (last name, first name of parties): <u>Fridman, Deborah L</u> <u>Fridman, Val M</u>	CASE NUMBER: <u>14D070523</u>
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5. DECLARATION REGARDING COMMUNITY AND QUASI-COMMUNITY ASSETS AND DEBTS AS CURRENTLY KNOWN

- a. ☐ There are no such assets or debts subject to disposition by the court in this proceeding.  
b. ☒ All such assets and debts are listed ☒ in Property Declaration (form FL-160) ☐ in Attachment 5b.  
☐ below (specify):

6. Petitioner requests

- a. ☐ dissolution of the marriage based on  
(1) ☐ irreconcilable differences. (Fam. Code, § 2310(a).)  
(2) ☐ incurable insanity. (Fam. Code, § 2310(b).)  
b. ☒ legal separation of the parties based on  
(1) ☒ irreconcilable differences. (Fam. Code, § 2310(a).)  
(2) ☐ incurable insanity. (Fam. Code, § 2310(b).)  
c. ☐ nullity of void marriage based on  
(1) ☐ incestuous marriage. (Fam. Code, § 2200.)  
(2) ☐ bigamous marriage. (Fam. Code, § 2201.)  
d. ☐ nullity of voidable marriage based on  
(1) ☐ petitioner's age at time of marriage. (Fam. Code, § 2210(a).)  
(2) ☐ prior existing marriage. (Fam. Code, § 2210(b).)  
(3) ☐ unsound mind. (Fam. Code, § 2210(c).)  
(4) ☐ fraud. (Fam. Code, § 2210(d).)  
(5) ☐ force. (Fam. Code, § 2210(e).)  
(6) ☐ physical incapacity. (Fam. Code, § 2210(f).)

7. Petitioner requests that the court grant the above relief and make injunctive (including restraining) and other orders as follows:

- |   | Petitioner               | Respondent               | Joint                               | Other                               |
|---|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| a. Legal custody of children to .....   | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| b. Physical custody of children to .....  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| c. Child visitation be granted to .....   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| As requested in form: <input type="checkbox"/> FL-311 <input type="checkbox"/> FL-312 <input type="checkbox"/> FL-341(C) <input type="checkbox"/> FL-341(D) <input checked="" type="checkbox"/> FL-341(E) <input type="checkbox"/> Attachment 7c. |                          |                          |                                     |                                     |
| d. <input type="checkbox"/> Determination of parentage of any children born to the Petitioner and Respondent prior to the marriage.   | <input type="checkbox"/> | <input type="checkbox"/> |                                     |                                     |
| e. Attorney fees and costs payable by .....   | <input type="checkbox"/> | <input type="checkbox"/> |                                     |                                     |
| f. Spousal support payable to (earnings assignment will be issued) .....  | <input type="checkbox"/> | <input type="checkbox"/> |                                     |                                     |
| g. <input checked="" type="checkbox"/> Terminate the court's jurisdiction (ability) to award spousal support to Respondent.   |                          |                          |                                     |                                     |
| h. <input type="checkbox"/> Property rights be determined.  |                          |                          |                                     |                                     |
| i. <input type="checkbox"/> Petitioner's former name be restored to (specify):  |                          |                          |                                     |                                     |
| j. <input type="checkbox"/> Other (specify):  |                          |                          |                                     |                                     |

☐ Continued on Attachment 7j.

8. Child support—If there are minor children born to or adopted by the Petitioner and Respondent before or during this marriage, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party. An earnings assignment may be issued without further notice. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.

9. I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

12/1/2014  
Dec, 2014

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

NOTICE: Dissolution or legal separation may automatically cancel the rights of a spouse under the other spouse's will, trust, retirement plan, power of attorney, pay on death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a spouse as beneficiary of the other spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement plans, and credit reports to determine whether they should be changed or whether you should take any other actions. However, some changes may require the agreement of your spouse or a court order (see Family Code sections 231–235).



FL-311

PETITIONER/PLAINTIFF: <u>Deborah L. Fridman</u>	CASE NUMBER:
RESPONDENT/DEFENDANT: <u>Val M. Fridman</u>	<u>14D010523</u>

CHILD CUSTODY AND VISITATION APPLICATION ATTACHMENT

TO ☒ Petition, Response, Application for Order or Responsive Declaration ☐ Other (specify):  
☐ To be ordered now and effective until the hearing

1. ☐ **Custody.** Custody of the minor children of the parties is requested as follows:

Child's Name	Date of Birth	Legal Custody to (person who makes decisions about health, education, etc.)	Physical Custody to (person with whom the child lives)
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2. ☐ **Visitation.**

- a. ☐ Reasonable right of visitation to the party without physical custody (not appropriate in cases involving domestic violence)  
b. ☐ See the attached \_\_\_\_\_-page document dated (specify date):  
c. ☐ The parties will go to mediation at (specify location):  
d. ☐ No visitation  
e. ☐ Visitation for the ☐ petitioner ☐ respondent will be as follows:

- (1) ☐ **Weekends starting (date):**

(The first weekend of the month is the first weekend with a Saturday.)

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th ☐ 5th weekend of the month  
from \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

to \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

(a) ☐ The parents will alternate the fifth weekends, with the ☐ petitioner ☐ respondent having the initial fifth weekend, which starts (date):

(b) ☐ The petitioner will have fifth weekends in ☐ odd ☐ even months.

- (2) ☐ **Alternate weekends starting (date):**

The ☐ petitioner ☐ respondent will have the children with him or her during the period  
from \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

to \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

- (3) ☐ **Weekdays starting (date):**

The ☐ petitioner ☐ respondent will have the children with him or her during the period  
from \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

to \_\_\_\_\_ at \_\_\_\_\_ ☐ a.m. ☐ p.m.  
(day of week) (time)

- (4) ☐ **Other (specify days and times as well as any additional restrictions):**

☐ See Attachment 2e(4).

Page 1 of 2

PETITIONER: <u>Deborah L. Fridman</u>	CASE NUMBER:
RESPONDENT: <u>Val M. Fridman</u>	<u>14D010523</u>

3. ☐ **Supervised visitation.**

I request that (name): have supervised visitation with the minor children according to the schedule set out on page 1 and that the visits be supervised by (name): who is a ☐ professional ☐ nonprofessional supervisor. The supervisor's phone number is (specify):

I request that the costs of supervision be paid as follows: petitioner: percent; respondent: percent.

If item 3 is checked, you must attach a declaration that shows why unsupervised visitation would be bad for your children. The judge is required to consider supervised visitation if one parent is alleging domestic violence and is protected by a restraining order.

4. ☐ **Transportation for visitation and place of exchange.**

- a. ☐ Transportation to the visits will be provided by (name):
- b. ☐ Transportation from the visits will be provided by (name):
- c. ☐ Drop-off of the children will be at (address):
- d. ☐ Pick-up of the children will be at (address):
- e. ☐ The children will be driven only by a licensed and insured driver. The car or truck must have legal child restraint devices.
- f. ☐ During the exchanges, the parent driving the children will wait in the car and the other parent will wait in his or her home while the children go between the car and the home.
- g. ☐ Other (specify):

5. ☐ **Travel with children.** The ☐ petitioner ☐ respondent ☐ other (name): must have written permission from the other parent or a court order to take the children out of

- a. ☐ the state of California.
- b. ☐ the following counties (specify):
- c. ☐ other places (specify):

6. ☐ **Child abduction prevention.** There is a risk that one of the parents will take the children out of California without the other parent's permission. I request the orders set out on attached form FL-312.

7. ☐ **Children's holiday schedule.** I request the holiday and visitation schedule set out on the attached ☐ form FL-341(C) ☐ other (specify):

8. ☐ **Additional custody provisions.** I request the additional orders regarding custody set out on the attached ☐ form FL-341(D) ☐ other (specify):

9. ☒ **Joint legal custody provisions.** I request joint legal custody and want the additional orders set out on the attached ☒ form FL-341(E) ☐ other (specify):

10. ☐ **Other.** I request the following additional orders (specify):

FL-341(E)

PETITIONER: <u>Deborah L. Fridman</u>	CASE NUMBER: <u>14D010523</u>
RESPONDENT: <u>Val M. Fridman</u>	

**JOINT LEGAL CUSTODY ATTACHMENT**

TO ☒ Petition or Application for Order ☐ Findings and Order After Hearing or Judgment  
☐ Stipulation and Order for Custody and/or Visitation of Children

1. The parents will have joint legal custody of the minor children.
2. In exercising joint legal custody, the parents will share in the responsibility and confer in good faith on matters concerning the health, education, and welfare of the children. The parents must confer in making decisions on the following matters:
  - a. ☒ Enrollment in or leaving a particular private or public school or daycare center
  - b. ☒ Participation in particular religious activities or institutions
  - c. ☒ Beginning or ending of psychiatric, psychological, or other mental health counseling or therapy
  - d. ☒ Selection of a doctor, dentist, or other health professional (except in emergency situations)
  - e. ☒ Participation in extracurricular activities
  - f. ☒ Out-of-country or out-of-state travel
  - g. ☐ Other (specify):

In all other matters in exercising joint legal custody, the parents may act alone, as long as the action does not conflict with any orders concerning the physical custody of the children.

3. If a parent does not obtain the required consent of the other parent to the decisions checked in item 2:
  - a. He or she may be subject to civil or criminal penalties.
  - b. The court may change the legal and physical custody of the minor children.
  - c. ☐ Other consequences (specify):
4. ☒ **Special decision-making designation**
  - a. The ☒ petitioner ☒ respondent will be responsible for making decisions regarding the following issues (specify):
  - b. ☒ Each parent will have access to the children's school, medical, and dental records and the right to consult with professionals who are providing services to the children.
5. ☒ **Health-care notification**
  - a. ☐ Each parent must notify the other of the name and address of each health practitioner who examines or treats the children; such notification must be made within (specify number): days of the commencement of the first such treatment or examination.
  - b. ☒ Each parent is authorized to take any and all actions necessary to protect the health and welfare of the children, including but not limited to consent to emergency surgical procedures or treatment. The parent authorizing such emergency treatment must notify the other parent as soon as possible of the emergency situation and of all procedures or treatment administered to the children.
  - c. ☐ Both parents are required to administer any prescribed medications for the children.
6. ☐ **School notification.** Each parent will be designated as a person the children's school will contact in the event of an emergency.
7. ☒ **Name.** Neither parent will change the last name of the children or have a different name used on the children's medical, school, or other records without the written consent of the other parent.
8. ☐ Other (specify):

SUPERIOR COURT-COUNTY OF ORANGE  
Lamoreaux Justice Center (LJC)  
Returned Check Subject to \$45 Fee

08140052585 FRIDMAN  
14D010523 @1884717  
DF 435.00

12/02/2014 TOTAL: 435.00  
08:46 PAID: 435.00 CR /  
JD 36A08 .00

DF MARRIAGE DISSOLUTION; F 435.00  
JD 36A08 12/02/2014 08:46 PAID CR /

FL-160

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>Deborah L. Fridman</b>  <b>18274 Santa Stephana Cir</b>  <b>Fountain Valley, CA 92708</b></p> <p>TELEPHONE NO.: <b>714 274 9090</b> FAX NO.:          E-MAIL ADDRESS:          ATTORNEY FOR (Name): <b>Self represented</b></p>	<p><b>FILED</b>          SUPERIOR COURT OF CALIFORNIA          COUNTY OF ORANGE          LAMOREAUX JUSTICE CENTER  <b>DEC 02 2014</b>          ALAN CARLSON, Clerk of the Court          BY: <b>J. DUONG</b>, DEPUTY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE          STREET ADDRESS: <b>ORANGE COUNTY SUPERIOR COURT</b>          MAILING ADDRESS: <b>FAMILY LAW COURT OPERATIONS</b>          CITY AND ZIP CODE: <b>341 THE CITY DRIVE</b>          BRANCH NAME: <b>POST OFFICE BOX 14170</b>  <b>ORANGE, CA 92663-1570</b></p>	
<p>PETITIONER: <b>Deborah L. Fridman</b>          RESPONDENT: <b>Val M. Fridman</b>          OTHER PARENT/PARTY: <b>none</b></p>	
<p><input checked="" type="checkbox"/> PETITIONER'S <input type="checkbox"/> RESPONDENT'S  <input checked="" type="checkbox"/> COMMUNITY AND QUASI-COMMUNITY PROPERTY DECLARATION  <input type="checkbox"/> SEPARATE PROPERTY DECLARATION</p>	<p>CASE NUMBER:  <b>140070523</b></p>

See Instructions on page 4 for information about completing this form. For additional space, use Continuation of Property Declaration (form FL-161).

A	B	C	D	E	F	
ITEM NO.	BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER RESPONDENT
1. REAL ESTATE 18274 Santa Stephana FV, CA 92708	11/2002	\$650,000	\$350,000	\$300,000	\$650,000	\$
2. HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES Already divided						
3. JEWELRY, ANTIQUES, ART. COIN COLLECTIONS, etc. none						
4. VEHICLES, BOATS, TRAILERS 1. 2006 Lexus ES 330	2006	7,400	0	7,400	7,400	
2. 2003 Honda Pilot	2009	4,500	0	4,500		4,500
5. SAVINGS ACCOUNTS Already divided						
6. CHECKING ACCOUNTS Already divided						

Page 1 of 4

Deborah L. Fridman

FL-160

A		B	C	D	E	F	
ITEM NO.	BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to:	PETITIONER RESPONDENT
7.	CREDIT UNION, OTHER DEPOSITORY ACCOUNTS <i>Already divided</i>		\$	\$	\$	\$	\$
8.	CASH <i>none</i>						
9.	TAX REFUND <i>none</i>						
10.	LIFE INSURANCE WITH CASH SURRENDER OR LOAN VALUE <i>none</i>						
11.	STOCKS, BONDS, SECURED NOTES, MUTUAL FUNDS <i>none</i>						
12.	RETIREMENT AND PENSIONS <i>Already divided</i>						
13.	PROFIT-SHARING, IRAS, DEFERRED COMPENSATION, ANNUITIES <i>none</i>						
14.	ACCOUNTS RECEIVABLE, UNSECURED NOTES <i>none</i>						
15.	PARTNERSHIP, OTHER BUSINESS INTERESTS <i>none</i>						
16.	OTHER ASSETS <i>none</i>						
17.	ASSETS FROM CONTINUATION SHEET <i>none</i>						
18.	TOTAL ASSETS						

FL-160

A	B	C	D	
ITEM NO. DEBTS— SHOW TO WHOM OWED	DATE INCURRED	TOTAL OWING	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER RESPONDENT	
19. STUDENT LOANS  none		\$	\$	\$
20. TAXES  none				
21. SUPPORT ARREARAGES  none				
22. LOANS—UNSECURED  none				
23. CREDIT CARDS USAA American Express Discover Chase		20,000 10,000 0 0	20,000	10,000
24. OTHER DEBTS  none				
25. OTHER DEBTS FROM CONTINUATION SHEET none				
26. TOTAL DEBTS		380,000		

☐ A Continuation of Property Declaration (form FL-161) is attached and incorporated by reference.

I declare under penalty of perjury under the laws of the State of California that, to the best of my knowledge, the foregoing is a true and correct listing of assets and obligations and the amounts shown are correct.

Date: Dec, 2014 12/1/2014

Deborah L. Fridman  
(TYPE OR PRINT NAME)

Deborah L. Fridman  
SIGNATURE

FL-160

## INFORMATION AND INSTRUCTIONS FOR COMPLETING FORM FL-160

*Property Declaration* (form FL-160) is a multipurpose form, which may be filed with the court as an attachment to a *Petition or Response* or served on the other party to comply with disclosure requirements in place of a *Schedule of Assets and Debts* (form FL-142). Courts may also require a party to file a *Property Declaration* as an attachment to a *Request to Enter Default* (form FL-185) or *Judgment* (form FL-180).

**When filing a *Property Declaration* with the court, do not include private financial documents listed below.**

### Identify the type of declaration completed

1. Check "Community and Quasi-Community Property Declaration" on page 1 to use *Property Declaration* (form FL-160) to provide a combined list of community and quasi-community property assets and debts. Quasi-community property is property you own outside of California that would be community property if it were located in California.
2. Do not combine a separate property declaration with a community and quasi-community property declaration. Check "Separate Property Declaration" on page 1 when using *Property Declaration* to provide a list of separate property assets and debts.

### Description of the *Property Declaration* chart

#### Pages 1 and 2

1. Column A is used to provide a brief description of each item of separate or community or quasi-community property.
2. Column B is used to list the date the item was acquired.
3. Column C is used to list the item's gross fair market value (an estimate of the amount of money you could get if you sold the item to another person through an advertisement).
4. Column D is used to list the amount owed on the item.
5. Column E is used to indicate the net fair market value of each item. The net fair market value is calculated by subtracting the dollar amount in column D from the amount in column C ("C minus D").
6. Column F is used to show a proposal on how to divide (or confirm) the item described in column A.

#### Page 3

1. Column A is used to provide a brief description of each separate or community or quasi-community property debt.
2. Column B is used to list the date the debt was acquired.
3. Column C is used to list the total amount of money owed on the debt.
4. Column D is used to show a proposal on how to divide (or confirm) the item of debt described in column A.

### When using this form only as an attachment to a *Petition or Response*

1. Attach a *Separate Property Declaration* to respond to item 4. Only columns A and F on pages 1 and 2, and columns A and D on page 3 are required.
2. Attach a *Community or Quasi-Community Declaration* to respond to item 5, and complete column A on all pages.

### When serving this form on the other party as an attachment to *Declaration of Disclosure* (form FL-140)

1. Complete columns A through E on pages 1 and 2, and columns A through C on page 3.
2. Copies of the following documents must be attached and served on the other party:
  - (a) For real estate (item 1): deeds with legal descriptions and the latest lender's statement.
  - (b) For vehicles, boats, trailers (item 4): the title documents.
  - (c) For all bank accounts (item 5, 6, 7): the latest statement.
  - (d) For life insurance policies with cash surrender or loan value (item 10): the latest declaration page.
  - (e) For stocks, bonds, secured notes, mutual funds (item 11): the certificate or latest statement.
  - (f) For retirement and pensions (item 12): the latest summary plan document and latest benefit statement.
  - (g) For profit-sharing, IRAs, deferred compensation, and annuities (item 13): the latest statement.
  - (h) For each account receivable and unsecured note (item 14): documentation of the account receivable or note.
  - (i) For partnerships and other business interests (item 15): the most current K-1 and Schedule C.
  - (j) For other assets (item 16): the most current statement, title document, or declaration.
  - (k) For support arrearages (item 21): orders and statements.
  - (l) For credit cards and other debts (items 23 and 24): the latest statement.
3. Do not file copies of the above private financial documents with the court.

**When filing this form with the court as a attachment to *Request to Enter Default* (FL-185) or *Judgment* (FL-180)**  
Complete all columns on the form.

**For more information** about forms required to process and obtain a judgment in dissolution, legal separation, and nullity cases, see <http://www.courts.ca.gov/selfhelp-divorcesteps.htm>.



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Deborah L. Fridman</b> <b>18274 Santa Stephana Cir</b> <b>Fountain Valley, CA 92708</b> TELEPHONE NO. <b>714 274 9090</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Self represented</b>		FOR COURT USE ONLY  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER  <b>APR 03 2015</b>  ALAN CARLSON, Clerk of the Court BY: <b>KL</b> <b>C. COOMBES</b> DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>341 The City Drive South</b> STREET ADDRESS: <b>Post Office Box 14170</b> MAILING ADDRESS: <b>Orange, California 92868-1570</b> CITY AND ZIP CODE: <b>Lamoreaux Justice Center</b> BRANCH NAME: PETITIONER: <b>Deborah L. Fridman</b> RESPONDENT: <b>Val M. Fridman</b>		
REQUEST TO ENTER DEFAULT		CASE NUMBER: <b>14DO16523</b>

1. To the clerk: Please enter the default of the respondent who has failed to respond to the petition.
2. A completed *Income and Expense Declaration* (form FL-150) or *Financial Statement (Simplified)* (form FL-155)  
☐ is attached ☒ is not attached.

A completed *Property Declaration* (form FL-160) ☒ is attached ☐ is not attached  
because (check at least one of the following):

- (a) ☒ there have been no changes since the previous filing.  
(b) ☐ the issues subject to disposition by the court in this proceeding are the subject of a written agreement.  
(c) ☐ there are no issues of child, spousal, or partner support or attorney fees and costs subject to determination by the court.  
(d) ☐ the petition does not request money, property, costs, or attorney fees. (Fam. Code, §2330.5.)  
(e) ☐ there are no issues of division of community property.  
(f) ☐ this is an action to establish parental relationship.

Date: **4-3-15**

**Deborah L. Fridman**  
(TYPE OR PRINT NAME)

**Deborah L. Fridman**  
(SIGNATURE OF ATTORNEY FOR PETITIONER)

3. Declaration

- a. ☐ No mailing is required because service was by publication or posting and the address of the respondent remains unknown.  
b. ☒ A copy of this *Request to Enter Default*, including any attachments and an envelope with sufficient postage, was provided to the court clerk, with the envelope addressed as follows (address of the respondent's attorney or, if none, the respondent's last known address):

**Val M. Fridman**  
**18274 Santa Stephana Cir**  
**Fountain Valley, CA 92708**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **4-3-15**

**Deborah L. Fridman**  
(TYPE OR PRINT NAME)

**Deborah L. Fridman**  
(SIGNATURE OF DECLARANT)

FOR COURT USE ONLY	
<input checked="" type="checkbox"/> Request to Enter Default mailed to the respondent or the respondent's attorney on (date): <b>APR 03 2015</b>	
<input checked="" type="checkbox"/> Default entered as requested on (date): <b>APR 03 2015</b>	
<input type="checkbox"/> Default not entered. Reason:	
ALAN CARLSON Clerk, by <b>KL</b> <b>CHRISTOPHER COOMBES</b> Deputy	

CASE NAME (Last name, first name of each party): <u>Fridman Deborah, Fridman Val</u>	CASE NUMBER: <u>14DO10523</u>
---	----------------------------------

4. Memorandum of costs

- a. ☒ Costs and disbursements are waived.  
b. Costs and disbursements are listed as follows:

(1) ☐ Clerk's fees ..... \$ .....  
(2) ☐ Process server's fees ..... \$ .....  
(3) ☐ Other (specify): ..... \$ .....  
..... \$ .....  
..... \$ .....  
..... \$ .....  
TOTAL ..... \$ .....

- c. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief, the foregoing items of cost are correct and have been necessarily incurred in this cause or proceeding.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4-3-15

Deborah L. Fridman  
(TYPE OR PRINT NAME)

► Deborah L. Fridman  
(SIGNATURE OF DECLARANT)

5. Declaration of nonmilitary status. The respondent is not in the military service of the United States as defined in section 511 et seq. of the Servicemembers Civil Relief Act (50 U.S.C. Appen. § 501 et seq.), and is not entitled to the benefits of such act.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4-3-15

Deborah L. Fridman  
(TYPE OR PRINT NAME)

► Deborah L. Fridman  
(SIGNATURE OF DECLARANT)

FL-160

<p><b>ATTORNEY OR PARTY WITHOUT ATTORNEY</b> (Name, State Bar number, and address):  <u>Deborah L. Fridman</u>  <u>18274 Santa Stephana Cir</u>  <u>Fountain Valley, CA 92708</u>          TELEPHONE NO: <u>714 274 9090</u> FAX NO.:          E-MAIL ADDRESS:          ATTORNEY FOR (Name): <u>Self represented</u></p>	<p><b>FILED</b>          SUPERIOR COURT OF CALIFORNIA          COUNTY OF ORANGE          LAMOREAUX JUSTICE CENTER    <b>DEC 02 2014</b>            ALAN CARLSON, Clerk of the Court            By: <u>J. DUONG</u>, DEPUTY</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</b>          STREET ADDRESS: <u>ORANGE COUNTY SUPERIOR COURT</u>          MAILING ADDRESS: <u>FAMILY LAW COURT OPERATIONS</u>          CITY AND ZIP CODE: <u>341 THE CITY DRIVE</u>          BRANCH NAME: <u>POST OFFICE BOX 14170</u>  <u>ORANGE, CA 92863-1570</u></p>	
<p>PETITIONER: <u>Deborah L. Fridman</u>          RESPONDENT: <u>Val M. Fridman</u>          OTHER PARENT/PARTY: <u>none</u></p>	
<p><input checked="" type="checkbox"/> PETITIONER'S <input type="checkbox"/> RESPONDENT'S  <input checked="" type="checkbox"/> COMMUNITY AND QUASI-COMMUNITY PROPERTY DECLARATION  <input type="checkbox"/> SEPARATE PROPERTY DECLARATION</p>	<p>CASE NUMBER:  <u>14D010523</u></p>

See Instructions on page 4 for information about completing this form. For additional space, use Continuation of Property Declaration (form FL-161).

A		B	C	D	E	F	
ITEM NO.	BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to:	
						PETITIONER	RESPONDENT
1.	REAL ESTATE <u>18274 Santa Stephana FV, CA 92708</u>	<u>11/2002</u>	<u>\$650,000</u>	<u>\$350,000</u>	<u>\$300,000</u>	<u>\$650,000</u>	\$
2.	HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES <u>Already divided</u>						
3.	JEWELRY, ANTIQUES, ART, COIN COLLECTIONS, etc. <u>none</u>						
4.	VEHICLES, BOATS, TRAILERS <u>1. 2006 Lexus ES 330</u>	<u>2006</u>	<u>7,400</u>	<u>0</u>	<u>7,400</u>	<u>7,400</u>	
	<u>2. 2003 Honda Pilot</u>	<u>2003</u>	<u>4,500</u>	<u>0</u>	<u>4,500</u>		<u>4,500</u>
5.	SAVINGS ACCOUNTS <u>Already divided</u>						
6.	CHECKING ACCOUNTS <u>Already divided</u>						

Page 1 of 4

FL-160

A		B	C	D	E	F	
ITEM NO.	BRIEF DESCRIPTION	DATE ACQUIRED	GROSS FAIR MARKET VALUE	AMOUNT OF DEBT	NET FAIR MARKET VALUE	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER RESPONDENT	
7.	CREDIT UNION, OTHER DEPOSITORY ACCOUNTS <i>Already divided</i>		\$	\$	\$	\$	\$
8.	CASH <i>none</i>						
9.	TAX REFUND <i>none</i>						
10.	LIFE INSURANCE WITH CASH SURRENDER OR LOAN VALUE <i>none</i>						
11.	STOCKS, BONDS, SECURED NOTES, MUTUAL FUNDS <i>none</i>						
12.	RETIREMENT AND PENSIONS <i>Already divided</i>						
13.	PROFIT-SHARING, IRAS, DEFERRED COMPENSATION, ANNUITIES <i>none</i>						
14.	ACCOUNTS RECEIVABLE, UNSECURED NOTES <i>none</i>						
15.	PARTNERSHIP, OTHER BUSINESS INTERESTS <i>none</i>						
16.	OTHER ASSETS <i>none</i>						
17.	ASSETS FROM CONTINUATION SHEET <i>none</i>						
18.	TOTAL ASSETS						

FL-160

A	B	C	D	
ITEM NO. DEBTS— SHOW TO WHOM OWED	DATE INCURRED	TOTAL OWING	PROPOSAL FOR DIVISION Award or Confirm to: PETITIONER RESPONDENT	
19. STUDENT LOANS  none		\$	\$	\$
20. TAXES  none				
21. SUPPORT ARREARAGES  none				
22. LOANS—UNSECURED  none				
23. CREDIT CARDS USAA American Express Discover Chase		20,000 10,000 0 0	20,000	10,000
24. OTHER DEBTS  none				
25. OTHER DEBTS FROM CONTINUATION SHEET none				
26. TOTAL DEBTS		380,000		

☐ A Continuation of Property Declaration (form FL-161) is attached and incorporated by reference.

I declare under penalty of perjury under the laws of the State of California that, to the best of my knowledge, the foregoing is a true and correct listing of assets and obligations and the amounts shown are correct.

Date: Dec, 2014 12/1/2014

Deborah L. Fridman

(TYPE OR PRINT NAME)

Deborah L. Fridman

SIGNATURE

## INFORMATION AND INSTRUCTIONS FOR COMPLETING FORM FL-160

*Property Declaration* (form FL-160) is a multipurpose form, which may be filed with the court as an attachment to a *Petition* or *Response* or served on the other party to comply with disclosure requirements in place of a *Schedule of Assets and Debts* (form FL-142). Courts may also require a party to file a *Property Declaration* as an attachment to a *Request to Enter Default* (form FL-165) or *Judgment* (form FL-180).

When filing a *Property Declaration* with the court, do not include private financial documents listed below.

### Identify the type of declaration completed

1. Check "Community and Quasi-Community Property Declaration" on page 1 to use *Property Declaration* (form FL-160) to provide a combined list of community and quasi-community property assets and debts. Quasi-community property is property you own outside of California that would be community property if it were located in California.
2. Do not combine a separate property declaration with a community and quasi-community property declaration. Check "Separate Property Declaration" on page 1 when using *Property Declaration* to provide a list of separate property assets and debts.

### Description of the Property Declaration chart

#### Pages 1 and 2

1. Column A is used to provide a brief description of each item of separate or community or quasi-community property.
2. Column B is used to list the date the item was acquired.
3. Column C is used to list the item's gross fair market value (an estimate of the amount of money you could get if you sold the item to another person through an advertisement).
4. Column D is used to list the amount owed on the item.
5. Column E is used to indicate the net fair market value of each item. The net fair market value is calculated by subtracting the dollar amount in column D from the amount in column C ("C minus D").
6. Column F is used to show a proposal on how to divide (or confirm) the item described in column A.

#### Page 3

1. Column A is used to provide a brief description of each separate or community or quasi-community property debt.
2. Column B is used to list the date the debt was acquired.
3. Column C is used to list the total amount of money owed on the debt.
4. Column D is used to show a proposal on how to divide (or confirm) the item of debt described in column A.

### When using this form only as an attachment to a *Petition* or *Response*

1. Attach a *Separate Property Declaration* to respond to item 4. Only columns A and F on pages 1 and 2, and columns A and D on page 3 are required.
2. Attach a *Community or Quasi-Community Declaration* to respond to item 5, and complete column A on all pages.

### When serving this form on the other party as an attachment to *Declaration of Disclosure* (form FL-140)

1. Complete columns A through E on pages 1 and 2, and columns A through C on page 3.
2. Copies of the following documents must be attached and served on the other party:
  - (a) For real estate (item 1): deeds with legal descriptions and the latest lender's statement.
  - (b) For vehicles, boats, trailers (item 4): the title documents.
  - (c) For all bank accounts (item 5, 6, 7): the latest statement.
  - (d) For life insurance policies with cash surrender or loan value (item 10): the latest declaration page.
  - (e) For stocks, bonds, secured notes, mutual funds (item 11): the certificate or latest statement.
  - (f) For retirement and pensions (item 12): the latest summary plan document and latest benefit statement.
  - (g) For profit-sharing, IRAs, deferred compensation, and annuities (item 13): the latest statement.
  - (h) For each account receivable and unsecured note (item 14): documentation of the account receivable or note.
  - (i) For partnerships and other business interests (item 15): the most current K-1 and Schedule C.
  - (j) For other assets (item 16): the most current statement, title document, or declaration.
  - (k) For support arrearages (item 21): orders and statements.
  - (l) For credit cards and other debts (items 23 and 24): the latest statement.
3. Do not file copies of the above private financial documents with the court.

When filing this form with the court as an attachment to *Request to Enter Default* (FL-165) or *Judgment* (FL-180) Complete all columns on the form.

For more information about forms required to process and obtain a judgment in dissolution, legal separation, and nullity cases, see <http://www.courts.ca.gov/selfhelp-divorcesteps.htm>.

FL-170

<b>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):</b> Deborah L. Fridman 18374 Santa Stephens Cir Fountain Valley, CA 92708 TELEPHONE NO. 714 274 9040 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Self represented		<b>FOR COURT USE ONLY</b>  <b>FILED</b> SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE LAMOREAUX JUSTICE CENTER MAY 08 2015 ALAN CARLSON, Clerk of the Court BY: M. BALDI DEPUTY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE</b> STREET ADDRESS: 341 THE CITY DRIVE MAILING ADDRESS: CITY AND ZIP CODE: ORANGE, CA 92868 BRANCH NAME: LAMOREAUX JUSTICE CENTER		
PETITIONER: Deborah Fridman RESPONDENT: Val Fridman		
<b>DECLARATION FOR DEFAULT OR UNCONTESTED</b> <input type="checkbox"/> DISSOLUTION <input checked="" type="checkbox"/> LEGAL SEPARATION		
		CASE NUMBER: 14D010523

(NOTE: Items 1 through 12 apply to both dissolution and legal separation proceedings.)

1. I declare that if I appeared in court and were sworn, I would testify to the truth of the facts in this declaration.
2. I agree that my case will be proven by this declaration and that I will not appear before the court unless I am ordered by the court to do so.
3. All the information in the ☐ amended ☒ Petition ☐ Response is true and correct.
4. Type of case (check a, b, or c):

a. ☐ Default without agreement

- (1) No response has been filed and there is no written agreement or stipulated judgment between the parties;
- (2) The default of the respondent was entered or is being requested, and I am not seeking any relief not requested in the petition; and
- (3) The following statement is true (check one):
  - (A) ☐ There are no assets or debts to be disposed of by the court.
  - (B) ☐ The community and quasi-community assets and debts are listed on the completed current *Property Declaration* (form FL-160), which includes an estimate of the value of the assets and debts that I propose to be distributed to each party. The division in the proposed *Judgment* (form FL-180) is a fair and equal division of the property and debts, or if there is a negative estate, the debts are assigned fairly and equitably.

b. ☒ Default with agreement

- (1) No response has been filed and the parties have agreed that the matter may proceed as a default matter without notice; and
- (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnership rights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.

c. ☐ Uncontested

- (1) Both parties have appeared in the case; and
- (2) The parties have entered into a written agreement regarding their property and their marriage or domestic partnership rights, including support, the original of which is being or has been submitted to the court. I request that the court approve the agreement.

5. Declaration of disclosure (check a, b, or c):

- a. ☐ Both the petitioner and respondent have filed, or are filing concurrently, a *Declaration Regarding Service of Declaration of Disclosure* (form FL-141) and an *Income and Expense Declaration* (form FL-150).
- b. ☐ This matter is proceeding by default. I am the petitioner in this action and have filed a proof of service of the preliminary *Declaration of Disclosure* (form FL-140) with the court. I hereby waive receipt of the final *Declaration of Disclosure* (form FL-140) from the respondent.
- c. ☒ This matter is proceeding as an uncontested action. Service of the final *Declaration of Disclosure* (form FL-140) is mutually waived by both parties. A waiver provision executed by both parties under penalty of perjury is contained on the *Stipulation and Waiver of Final Declaration of Disclosure* (form FL-144), in the settlement agreement or proposed judgment or another, separate stipulation.

FL-170

PETITIONER: <u>Deborah Fridman</u>	CASE NUMBER:
RESPONDENT: <u>Val Fridman</u>	<u>14DO10523</u>

6. ☒ Child custody and visitation (parenting time) should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. ☐ The information in *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) ☐ has ☒ has not changed since it was last filed with the court. (If changed, attach updated form.)
- b. ☐ There is an existing court order for custody/parenting time in another case in (county):  
The case number is (specify):
- c. ☐ The current custody and visitation (parenting time) previously ordered in this case, or current schedule is (specify):  
☐ Contained on Attachment 6c.
- d. ☐ Facts in support of requested judgment (In a default case, state your reasons below):  
☐ Contained on Attachment 6d.
7. ☐ Child support should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. If there are minor children, check and complete item (1) if applicable and item (2) or (3):
- (1) ☐ Child support is being enforced in another case in (county):  
The case number is (specify):
- (2) ☐ The information in the child support calculation attached to the proposed judgment is correct based on my personal knowledge.
- (3) ☐ I request that this order be based on the ☐ petitioner's ☐ respondent's earning ability. The facts in support of my estimate of earning ability are (specify):  
☐ Continued on Attachment 7a(3).
- b. Complete items (1) and (2) regarding public assistance.
- (1) I ☐ am receiving ☒ am not receiving ☐ intend to apply for public assistance for the child or children listed in the proposed order.
- (2) To the best of my knowledge, the other party ☐ is ☒ is not receiving public assistance.
- c. ☐ The petitioner ☐ respondent is presently receiving public assistance, and all support should be made payable to the local child support agency at the address set forth in the proposed judgment. A representative of the local child support agency has signed the proposed judgment.
8. **Spousal, Partner, and Family Support** (If a support order or attorney fees are requested, submit a completed Income and Expense Declaration (form FL-150) unless a current form is on file. Include your best estimate of the other party's income. Check at least one of the following.)
- a. ☒ I knowingly give up forever any right to receive spousal or partner support.
- b. ☐ I ask the court to reserve jurisdiction to award spousal or partner support in the future to (name):
- c. ☐ I ask the court to terminate forever spousal or partner support for: ☐ petitioner ☐ respondent.
- d. ☐ Spousal support or domestic partner support should be ordered as set forth in the proposed *Judgment* (form FL-180) based on the factors described in:  
☐ *Spousal or Partner Support Declaration Attachment* (form FL-157)  
☐ written agreement  
☐ attached declaration (Attachment 8d.)
- e. ☐ Family support should be ordered as set forth in the proposed *Judgment* (form FL-180).
- f. ☐ Other (specify):



FL-170

PETITIONER: <u>Deborah Fridman</u>	CASE NUMBER:
RESPONDENT: <u>Val Fridman</u>	<u>14DO10523</u>

9. ☐ Parentage of the children of the petitioner and respondent born prior to their marriage or domestic partnership should be ordered as set forth in the proposed *Judgment* (form FL-180).
- a. ☐ A Voluntary Declaration of Paternity is attached.
- b. ☐ Parentage was previously established by the court in (county):  
The case number is (specify):  
☐ Written agreement of the parties attached here or to the *Judgment* (form FL-180).
10. ☐ Attorney fees should be ordered as set forth in the proposed *Judgment* (form FL-180)  
☐ facts in support in form FL-319  
☐ other (specify facts below):
11. ☐ The judgment should be entered nunc pro tunc for the following reasons (specify):
12. ☐ The petitioner ☐ respondent requests restoration of his or her former name as set forth in the proposed *Judgment* (form FL-180).
13. There are irreconcilable differences that have led to the irremediable breakdown of the marriage or domestic partnership, and there is no possibility of saving the marriage or domestic partnership through counseling or other means.
14. This declaration may be reviewed by a commissioner sitting as a temporary judge, who may determine whether to grant this request or require my appearance under Family Code section 2336.

**STATEMENTS IN THIS BOX APPLY ONLY TO DISSOLUTIONS**

15. If this is a dissolution of marriage or of a domestic partnership created in another state, the petitioner and/or the respondent have been residents of this county for at least three months and of the state of California for at least six months continuously and immediately preceding the date of the filing of the petition for dissolution of marriage or domestic partnership.
16. I ask that the court grant the request for a judgment for dissolution of marriage or domestic partnership based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.
17. ☐ This declaration is for the termination of marital or domestic partner status only. I ask the court to reserve jurisdiction over all issues whose determination is not requested in this declaration.

**THIS STATEMENT APPLIES ONLY TO LEGAL SEPARATIONS**

18. I ask that the court grant the request for a judgment for legal separation based on irreconcilable differences and that the court make the orders set forth in the proposed *Judgment* (form FL-180) submitted with this declaration.  
I understand that a judgment of legal separation does not terminate a marriage or domestic partnership and that I am still married or a partner in a domestic partnership.

19. ☐ Other (specify):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4-3-15

Deborah L. Fridman  
(TYPE OR PRINT NAME)

Deborah L. Fridman  
(SIGNATURE OF DECLARANT)

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## EXHIBIT “3”

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

SEP 29 2015  
ALAN CARLSON, Clerk of the Court  
BY N. TURNER-MITANI

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

MOISEY FRIDMAN and ROSA FRIDMAN,

Petitioners,

v.

BEACH CREST VILLAS HOMEOWNERS

ASSOCIATION, a California corporation,

Respondent.

Case No.: 30-2010-00424435

ORDER DENYING PETITION FOR WRIT OF  
MANDATE

On November 12, 2010, Petitioners Rosa and Moisey Fridman filed a Petition for Writ of Mandate. Respondent Beach Crest Villas Homeowners Association filed a Return. Having considered the memoranda and supporting documents and for the reasons stated below, the Petition is denied.

**PROCEDURAL HISTORY AND RELEVANT FACTS<sup>1</sup>**

In 1999, Petitioners installed an air conditioning unit in their Beach Crest Villas condominium. In 2006, the Beach Crest Villas Homeowners Association's board voted to compel Petitioners to remove the air conditioning unit because it had been installed without board approval. Petitioners refused, contending they had properly applied for and received permission to install the unit. Respondent began fining Petitioners on a weekly basis, who refused to pay the fines.

<sup>1</sup> The relevant facts and procedural history are largely taken from minute orders in the instant matter and from the Court of Appeal's unpublished opinions (case nos. G042757 and G044704) for the appeal of the underlying case and an earlier appeal of the order of dismissal after the Court sustained the demurrer without leave to amend in this matter.

1 On September 5, 2007, Petitioners filed a complaint in Orange County Superior Court  
2 case number 07CC09589 against Respondent for negligence, breach of fiduciary duty,  
3 intentional infliction of emotional distress, violation of fair housing laws, and breach of contract –  
4 the Declaration of Restrictions for Beach Crest Villas Condominiums (the Declaration).  
5 Respondent filed a cross-complaint against Petitioners for breach of the Declaration, breach of  
6 Respondent's rules and regulations, private nuisance, defamation, conversion, and declaratory  
7 relief.

8 In September 2008, the parties stipulated to binding arbitration, pursuant to Code of Civil  
9 Procedure section 1281 et seq., of Petitioners' fifth cause of action for breach of contract and  
10 the entirety of Respondent's cross-complaint. The arbitration hearing was conducted in March  
11 2009, and the arbitrator issued an award in May 2009. The arbitrator found Respondent had  
12 breached its fiduciary duties to Petitioners, and awarded \$100 in emotional distress damages.  
13 He also found Respondent failed to prove any of its causes of action against Petitioners. The  
14 arbitrator determined Petitioners to be the prevailing party, and awarded them \$110,000 in  
15 attorney fees.

16 By letter, Respondent requested the arbitrator amend the award. In response, the  
17 arbitrator issued a corrected award, in which he found Respondent had breached the  
18 Declaration, but Petitioners had suffered no monetary damages as a result of that breach. The  
19 corrected award therefore eliminated the reference to emotional distress damages. The  
20 arbitrator again found Respondent had failed to prove any of its causes of action, and  
21 Petitioners were the prevailing party and entitled to recover \$110,000 in attorney fees.

22 On July 9, 2009, Petitioners filed a petition to confirm the arbitration award. Respondent  
23 filed a petition to correct or vacate the arbitrator's award. The trial court heard both petitions  
24 together, confirmed the arbitration award, and entered judgment in favor of Petitioners in the  
25 amount of \$128,821.98.

1 Respondent appealed. On August 4, 2010, the Court of Appeal filed an unpublished  
2 opinion (case no. G042757). The Court of Appeal dismissed the appeal, finding that in the  
3 stipulation to arbitration, Respondent had waived its right to appeal the judgment following  
4 confirmation of the arbitration award. After issuance of the remittitur, the trial court in the  
5 underlying action (case no. 07CC09589) awarded Petitioners their costs and attorney fees  
6 incurred on appeal, in the amount of \$20,729.

7 On November 12, 2010, Petitioners filed a Petition for Writ of Mandate, which is the  
8 subject of the instant action. They requested that the Court issue a writ of mandate ordering the  
9 Beach Crest's Board of Directors to hold a special assessment to pay the judgment. On  
10 December 10, 2010, verifications by the Petitioners to the Petition were filed. Respondent  
11 demurred to the Petition. This Court sustained the demurrer without leave to amend.  
12 Petitioners appealed. On September 6, 2011, the Court of Appeal filed an unpublished opinion  
13 (case no. G044704) reversing this Court's order. The Court of Appeal held that Civil Code  
14 section 1366 authorizes a homeowners association to levy a special assessment to satisfy a  
15 legal judgment against it. The Court of Appeal reasoned that this Court erred by determining as  
16 a matter of law, that Petitioners had failed to make the required allegations.<sup>2</sup>

17 Meanwhile, Karl Avetoom, a resident of Beach Crest Villas, obtained a judgment against  
18 Petitioners in *Avetoom v. Arce, et al.*, Orange County Superior Court case number 30-2010-  
19 00345490. The Court takes judicial notice of the judgment filed in that case on November 18,  
20 2011. Petitioners appealed (case no. G046440). That appeal was stayed based on the  
21 bankruptcy filing of Petitioners. Respondent alleged that Avetoom partially assigned his  
22 judgment to Respondent, and that Respondent is entitled to offset the judgments resulting in a  
23 net judgment in favor of Respondent. (Return, at p. 5.)

24  
25  
26 <sup>2</sup> On March 15, 2012, the Court ruled on Respondent's motion to tax costs on appeal. On June  
19, 2012, the Court granted Petitioners' motion for attorney fees on appeal awarding \$44,190 in  
reasonable attorney fees.

1 On December 30, 2011, Respondent filed a Return to the Writ of Mandate by Verified  
2 Answer. On March 12, 2012, Respondent filed a notice of stay based on a February 10, 2012  
3 bankruptcy filing by Petitioners. On March 19, 2012, the Court issued a briefing schedule and  
4 set a hearing on the Petition. On May 3, 2012, Petitioners filed a Supplemental Memorandum  
5 of Points and Authorities, a document entitled "Separate Statement," a request for judicial notice  
6 of Exhibits A through P of the Appendix of Exhibits that was previously filed in this action on  
7 November 12, 2010, and an Amended Appendix of Exhibits. On June 29, 2012, Respondent  
8 filed a document entitled "Memorandum of Points and Authorities in Support of Return to Writ of  
9 Mandate; Request for Statement of Decision pursuant to CCP § 632" which included a  
10 declaration of William Gabriel and a request for judicial notice of all documents submitted in  
11 Petitioners' request for judicial notice and two documents filed in the Petitioners' bankruptcy  
12 action. On July 9, 2012, proceedings were stayed pending resolution of Petitioners' bankruptcy  
13 proceeding. On September 12, 2012, Petitioners filed a document entitled "Reply to Return".

14 On February 14, 2013, Petitioners advised the Court that the bankruptcy court had  
15 issued a ruling that this matter was not subject to the bankruptcy stay. A hearing on the Petition  
16 that had been set for March 1, 2013 was continued to April 5, 2013 due to the Court's docket  
17 condition. On April 16, 2013, the Court stayed proceedings on the Petition pending the  
18 resolution of the appeal in *Avetoom v. Fridman* (case no. G046440), which was also stayed by  
19 Petitioner's bankruptcy action. Despite the Court's order staying proceedings on the Petition, the  
20 parties filed four motions and four ex parte applications between April 16, 2013 and June 8,  
21 2015. On September 12, 2014, the Court stayed the hearing on Petitioners' motion to establish  
22 lien priority because the motion would violate the bankruptcy stay.

23 On June 8, 2015, the Court of Appeal was notified that the bankruptcy court approved  
24 the sale of Petitioners' appellate rights to Avetoom, who then filed a request for dismissal of the  
25 Petitioners' appeal. The Court of Appeal dismissed Petitioners' appeal. This Court then lifted  
26

1 the stay in the instant action and set the matter for a case management conference on July 13,  
2 2015. On that date, the parties indicated that the matter did not require an evidentiary hearing,  
3 additional briefing had been submitted, and that courtesy copies of exhibits in support or in  
4 opposition of the Petition would be delivered to the Court. Petitioners provided a courtesy copy  
5 of the Amended Appendix of Exhibits in support of the Petition for Writ of Mandate, which was  
6 filed with the Court on May 3, 2012. Respondent provided a courtesy copy of a document  
7 entitled, "Respondent's Appendix in support of Opposition to Petitioner's Writ of Mandate." This  
8 document, however, had never been filed or served on Petitioners. Accordingly, this Court did  
9 not consider Respondent's Appendix, as it was not properly before the Court.

10 At a subsequent case management conference held on August 28, 2015, the parties  
11 indicated that they had not provided all of the briefing that the April 16, 2013 minute order had  
12 delineated. The parties, however, agreed that this Court could resolve the Petition without the  
13 briefing delineated in the April 16, 2013 minute order. The Court then took the matter under  
14 submission.

15 **The Petition**

16 In the Petition, Petitioners alleged the following. They have a judgment totaling  
17 \$165,676.59 against Respondent. To date, Respondent has refused to pay the judgment and  
18 has failed to assess the owners (excluding Petitioners) to pay the judgment. They have no  
19 other adequate remedy at law or equity other than a writ compelling the board of directors of  
20 Respondent to specially assess their members. They seek a peremptory writ of mandate in the  
21 first instance directing the board of Respondent to levy a special assessment against the  
22 homeowners of Beach Crest Villas (excluding Petitioners). (Petr. at pp. 2-4.) Alternatively, they  
23 ask the Court to issue an alternative writ directing the board of directors of Respondent to  
24 specially assess the homeowners (excluding Petitioners) within 30 days of the Petition or, in the  
25 alternative to show cause why the court should not issue such order and then thereafter issue a  
26

peremptory writ directing the directors of Respondent to specially assess its members  
(excluding Petitioners) for the full value of the judgment obtained by Petitioners against  
Respondent. (Petr. at p. 5.)

#### **The Return**

In its Return, Respondent admitted all of the allegations of the Petition with the exception  
of (1) the allegation in paragraph 4 that it waived "all rights" to appeal, denying that it waived its  
right to appeal the court's decision on a petition to confirm the award; and (2) the allegations in  
paragraph 15 that Petitioners have no adequate remedy to enforce their judgment. Respondent  
raised 11 affirmative defenses: (1) failure to state a claim; (2) adequate remedy in the ordinary  
course of law; (3) failure to comply with condition precedent; (4) Corporations Code section  
7350 prohibits the remedy sought by Petitioners; (5) pursuant to CC&R's Article VII, Section  
Four, Petitioner's remedy cannot exceed five percent of the budgeted gross expenses of  
Respondent; (6) the doctrine of unclean hands; (7) prevailing equities; (8) attorney fees; (9)  
"Request for CCP §1094 Hearing"; (10) equitable offset; and (11) fraudulent assignment.

### **ANALYSIS**

#### **I. Requirements for Issuance of a Writ of Mandate**

A writ of mandate may be issued "to compel the performance of an act which the law  
specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission  
of a party to the use and enjoyment of a right or office to which the party is entitled, and from  
which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person."  
(Code Civ. Proc., § 1085.) "The writ must be issued in all cases where there is not a plain,  
speedy, and adequate remedy, in the ordinary course of the law." (Code Civ. Proc., § 1086.) A  
writ will issue only "upon the verified petition of the party beneficially interested." (Code Civ.  
Proc., § 1086.)



Civil Code section 1366 requires a homeowners association to levy assessments necessary for the association to perform its legal obligations, as follows: "(a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title . . . . [¶] (1) An extraordinary expense required by an order of a court." (Civ. Code, § 1366, subds. (a) & (b).)

**II. If Petitioners Have Assigned the Judgment in Case Number 07CC09589, They Do Not Have a Clear, Present, and Beneficial Right to Respondent Levying A Special Assessment**

The petitioner must have a "clear, present and beneficial right" to the performance of the duty allegedly owed by the respondent. (*Ellena v. Dept. of Insurance* (2014) 230 Cal.App.4th 198, 205.) To establish a beneficial interest, the petitioner must show he or she has some special interest to be served or some particular right to be preserved or protected through issuance of the writ. (*Carsten v. Psychology Examining Committee* (1980) 27 Cal.3d 793, 796.) The writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied. (*Ibid.*) "The petitioner's interest in the outcome of the proceedings must be substantial, i.e., a writ will not issue to enforce a technical abstract or moot right." (*Braude v. City of Los Angeles* (1990) 226 Cal.App.3d 83, 87.) If circumstances change during the pendency of a mandate proceeding such that the petitioner no longer has a beneficial interest in the outcome, the superior court will deny writ relief. (*County of San Luis Obispo v. Superior Court* (2001) 90 Cal.App.4th 288, 293-295 [petitioner suffered foreclosure before the court ruled on challenge to adverse administrative decision and consequently lost beneficial interest to obtain writ].)

Here, Petitioners asserted in an objection to the notice of stay filed in the instant matter on March 13, 2012, that the automatic bankruptcy stay pursuant to 11 U.S.C. section 362 did not apply because they had assigned the judgment in case number 07CC09589 to their

1 attorneys Darling & Risbrough, LLP, prior to the bankruptcy filing.<sup>3</sup> This assertion was repeated  
2 by Petitioners in other filings, including a brief filed on April 2, 2012, and a supplemental  
3 memorandum of points and authorities filed on May 3, 2012. If indeed Petitioners have  
4 assigned the underlying judgment to their attorneys, they have lost their clear and substantial  
5 beneficial interest to obtain the writ. (See *County of San Luis Obispo v. Superior Court*, *supra*,  
6 90 Cal.App.4th at p. 292.) Accordingly, they are not entitled to writ relief.

7 **III. The Court Declines to Exercise Its Discretion in Enforcing Either the Alleged Attorney**  
8 **Lien or the Alleged Offset**

9 Respondent alleged in the Return that Karl Avetoom assigned part of his judgment  
10 against Petitioners, and that Respondent was entitled to equitable offset. (Return, at p. 5.) An  
11 "equitable offset is a means by which a debtor may satisfy in whole or in part a judgment or  
12 claim held against him out of a judgment or claim which he has subsequently acquired against  
13 his judgment creditor. The right exists independently of statute and rests upon the inherent  
14

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15 <sup>3</sup> The automatic bankruptcy stay pursuant to 11 U.S.C. section 362 "sweeps broadly, enjoining  
16 the commencement or continuation of any judicial, administrative, or other proceedings against  
17 the debtor, enforcement of prior judgments, perfection of liens, and 'any act to collect, assess or  
18 recover a claim against the debtor that arose before the commencement of the case.' 11 U.S.C.  
19 § 362(a)(6)." (*In re Gruntz* (9th Cir. 2000) 202 F.3d 1074, 1081-1082.) "Any state court  
20 modification of the automatic stay would constitute an unauthorized infringement upon the  
21 bankruptcy court's jurisdiction to enforce the stay." (*Id.* at p. 1082.) "In order for assets to come  
22 within the auspices of [the bankruptcy court pursuant to 11 U.S.C. § 363] they must be property  
of the [debtor's] estate." (*In re Stein & Day, Inc.* (Bankr. S.D.N.Y. 1990) 113 B.R. 157, 162.)  
The estate created by the filing of a bankruptcy petition consists of "all legal or equitable  
interests of the debtor in property as of the commencement of the case." (*Ibid.* [citing 11 U.S.C.  
§ 541, subd. (a)(1)].) "Generally, bankruptcy courts lack jurisdiction to adjudicate controversies  
between third parties [that] do not involve the debtor or property of the debtor, unless the court  
cannot perform its administrative duties without resolving the controversy. [Citations.]" (*Id.* at p.  
161.)

23 It appears that Petitioners changed their positions in both Bankruptcy Court and in this  
24 Court as to whether they had assigned their judgment to their attorneys or their attorneys had  
25 attorney liens on the judgment. Statements by a bankruptcy debtor's counsel as to the assets in  
26 the bankruptcy estate are not binding on the bankruptcy court. (See *id.* at p. 162.) These  
different positions appear to have caused varying orders from the Bankruptcy Court as to  
whether the automatic stay applied as to this matter. (See e.g., Bankruptcy Court's 1/17/2013  
Relief from Stay Order, 8/8/2014 Order Clarifying the January 17, Order, and January 8, 2015  
Order [case no. 8:12-bk-11721-ES].)

1 power of the court to do justice to the parties before it." (*Salaman v. Bolt* (1977) 74 Cal.App.3d  
2 907, 918.) "[I]t is well settled that a court of equity will compel a set-off when mutual demands  
3 are held under such circumstances that one of them should be applied against the other and  
4 only the balance recovered." (*Harrison v. Adams* (1942) 20 Cal.2d 646, 648, internal citation  
5 omitted.) "And a judgment debtor who has, by assignment or otherwise, become the owner of a  
6 judgment or claim against his judgment creditor, may go into the court in which the judgment  
7 against him was rendered and have his judgment offset against the first judgment." (*Id.* at pp.  
8 648-649.)

9 "Offset is expressed as a right of the judgment debtor." (*Margott v. Gem Properties, Inc.*  
10 (1973) 34 Cal.App.3d 849, 854.) "Although it is commonly stated that the trial court has  
11 discretion in enforcing the right of offset, the discretion must be exercised within legal limits.  
12 Thus, unless the judgment creditor establishes the existence of facts supporting some equitable  
13 principle precluding it, offset is a matter of right . . . , at least where the judgment creditor is  
14 insolvent." (*Id.* at p. 854, internal citation omitted.) The "offset of judgment against judgment is  
15 a matter of right absent the existence of facts establishing competing equities or an equitable  
16 defense precluding the offset." (*Brienza v. Tepper* (1995) 35 Cal.App.4th 1839, 1847-1848.)

17 In response to Respondent's offset argument, Petitioners argue that their attorneys have  
18 an attorney lien on Petitioners' underlying judgment. "A lien in favor of an attorney upon the  
19 proceeds of a prospective judgment in favor of his client for legal services rendered has been  
20 recognized in numerous cases." (*Cetenko v. United California Bank* (1982) 30 Cal.3d 528,  
21 531.) Such a lien can be created by express contract. (*Ibid.*) "An attorney's contractual or  
22 'charging' lien is equitable in nature." (*Brienza v. Tepper, supra*, 35 Cal.App.4th at p. 1847.) An  
23 attorney's contingent fee contractual lien is given priority over a party's right to equitable offset  
24 only if the equities in the particular case require such result. (*Id.* at pp. 1844-1845.)  
25

1 Here, numerous factors weigh against this Court exercising its discretion in enforcing  
2 either the attorney charging lien or the offset. First, because of the shifting position by  
3 Petitioners as to whether they had assigned their judgment or that their attorneys have a  
4 charging lien, Petitioners have not established that their attorneys have a proper charging lien.  
5 (See *Fletcher v. Davis* (2004) 33 Cal.4th 61, 71.) Second, while it does not appear that  
6 Petitioners truly dispute the partial assignment of Avetoom's judgment against Petitioners,  
7 Respondent has not established an actual partial assignment of Avetoom's judgment against  
8 Petitioners. Third, even assuming that a charging lien and offset have been established, it has  
9 not been established which equitable claim should be accorded priority after considering the  
10 competing equities. Fourth, this matter has the additional wrinkle of Petitioners' bankruptcy,  
11 which was filed during the pendency of this writ proceeding. The offset or the charging lien may  
12 run afoul of the bankruptcy's automatic stay. The Bankruptcy Court's orders fail to clarify  
13 whether the Petitioners' counsel or Respondent have relief from the bankruptcy stay to pursue  
14 enforcing a lien or offset in this Court. And finally, the parties are reminded that this proceeding

15 is based upon a petition for writ of mandate to compel Respondent to levy a special  
16 assessment, not to enforce the underlying judgment. This Court's decision not to exercise its  
17 discretion in enforcing the attorney charging lien or the offset does not foreclose Respondent or  
18 Petitioners' attorneys from seeking such equitable claims in other more appropriate contexts,  
19 such as the Bankruptcy Court or in any enforcement of judgment action.

20 **IV. Petitioners' Motion for Attorney Fees Is Denied**

21 Petitioners filed a motion entitled "Motion of Judgment Creditors for Reasonable and  
22 Necessary Attorneys' Fees of \$160,346.46 as Costs in Enforcing Judgment." On April 16, 2013,  
23 this Court denied in part the motion (specifically, the fees generated by bankruptcy counsel) and  
24 determined that the balance of the claim for attorney fees incurred by Darling & Risbrough on  
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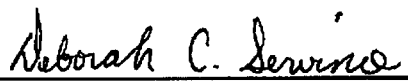
1 the writ and for enforcement of the judgment was premature. Because the Court denies the  
2 Petition for Writ of Mandate, the balance of Petitioners' motion for attorney fees is denied.

3 **CONCLUSION**

4 Accordingly, the Petition for Writ of Mandate is hereby DENIED. Respondent is ordered  
5 to file and serve a proposed judgment no later than October 13, 2015. The Clerk is ordered to  
6 give notice of this Order.

7 IT IS SO ORDERED.

8  
9 Dated: 9/29/2015

  
Deborah C. Servino  
Judge of the Superior Court

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1100 Rutland Road # 9 Newport Beach, CA 92660 Attention Karl Avetoom

A true and correct copy of the foregoing document entitled: ***CREDITOR KARL AVETOOM'S RESPONSE TO DEFENDANTS VAL FRIDMAN and ALEX FRIDMAN'S OPPOSITION TO PLAINTIFF'S MOTION TO DISMISS; MOTION TO STRIKE PORTIONS OF THE PLAINTIFF'S MOTION THAT ARE IN VIOLATION OF FED. R. EVID. RULE 408 AND REQUEST FOR HEARING (LR 9013- 1(o))[DOCKET No: 85]; SUPPORTING DECLARATION OF KARL AVETOOM*** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 10/08/2015, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Karl T Anderson (TR) edansie@hotmail.com, kanderson@ecf.epiqsystems.com
- Anthony A Friedman aaf@lnbyb.com
- Brad A Mokri amirmokri1@yahoo.com, gmokrilaw@yahoo.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

On 10/19/2015, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 10/19/2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Hon. Erithe A. Smith  
United States Bankruptcy Court  
411 West Fourth Street, Suite 5040 / Courtroom 5A  
Santa Ana, CA 92701-4593  
(personal delivery)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/19/2015

Date 10-19-15

Dominic Gargano

Printed Name

  
Signature